


**Office of the United Nations  
High Commissioner for Human Rights**

**Conflict-Related Sexual Violence in Ukraine  
14 March 2014 to 31 January 2017**



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## **I. Executive Summary**

1. This report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) covers the period from 14 March 2014 to 31 January 2017. It applies to the whole territory of Ukraine, including the Autonomous Republic of Crimea, as per United Nations General Assembly resolution 68/262 on the territorial integrity of Ukraine.

2. Following the violence and human rights violations that took place during the large-scale protests on Maidan from 21 November 2013 to 22 February 2014, the Government of Ukraine invited OHCHR to monitor the human rights situation in the country, and to provide regular public reports on the human rights situation and emerging concerns and risks.<sup>1</sup> On 14 March 2014, OHCHR deployed the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU). On 16 March 2014, an unrecognised referendum was held in the Autonomous Republic of Crimea, which was followed by the occupation<sup>2</sup> of Crimea by the Russian Federation. From April 2014, HRMMU observed signs of the rapid deterioration of the security situation in east and south-east regions of Ukraine. Armed groups unlawfully seized public buildings, police and security facilities in Donetsk and Luhansk regions, in a well-organised and coordinated fashion. On 14 April 2014, the Government launched a security operation to re-establish control over those territories. In May 2014, armed groups self-proclaimed a “people’s republic” in both regions. Since then, an armed conflict has been ongoing in certain districts of Donetsk and Luhansk regions. It was fuelled by the inflow of foreign fighters and weapons, including from the Russian Federation.<sup>3</sup>

3. Since the deployment of HRMMU, OHCHR has gathered substantial information related to human rights violations and abuses, notably in the eastern part of the country affected by the ongoing armed conflict, as well as in the Autonomous Republic of Crimea.

4. OHCHR has been paying particular attention to the issue of conflict-related sexual violence since the beginning of the armed conflict in April 2014. OHCHR observed that allegations of sexual violence perpetrated by all parties involved in hostilities are entrenched in the narratives of people living along the contact line. While often unverified, such allegations were widely disseminated by media on both sides of the contact line, contributing to deepening the mistrust, divide and animosity among local communities.

5. Cases of sexual violence are usually under-reported, including because of a general unease about this issue, as well as the stigma and trauma associated with it. OHCHR was not able to verify all allegations of conflict-related sexual violence brought to its attention, particularly in territory controlled by armed groups. This was due to limited access to some places for security reasons, rare access to conflict-related detainees in these areas, and the reluctance of people to talk for fear of reprisals. With no physical access to the Autonomous Republic of Crimea, OHCHR has limited information about

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<sup>1</sup> OHCHR presence in Ukraine is also mandated to recommend concrete follow-up action to relevant authorities in Ukraine, the United Nations and the international community at large to address human rights concerns, prevent human rights violations and mitigate emerging risks. OHCHR operates in accordance with the General Assembly resolution 68/262 on the territorial integrity of Ukraine.

<sup>2</sup> A/RES/71/205 Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine).

<sup>3</sup> For more background information, see the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75) and 16 periodic OHCHR reports on the human rights situation in Ukraine.

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conflict-related sexual violence there. Lack of direct contact with the survivors<sup>4</sup> makes it less likely for them to disclose details that could enable OHCHR to draw conclusions about the use of sexual violence. Lack of access to persons deprived of their liberty prevents any independent oversight, and makes it impossible to assess the occurrence and extent of acts of torture and sexual violence.

6. The interchangeable use of terms such as conflict-related sexual violence, gender-based violence and domestic violence by the Government of Ukraine, media, service providers and those documenting human rights violations contributes to confusion and makes it even more complex to determine the scale and scope of the problem.<sup>5</sup>

7. This report presents only a sample of 31 emblematic cases that illustrate broad patterns and trends of conflict-related sexual violence documented by OHCHR. The number of cases in this report may not reflect the real scale of violations or abuses, but is rather indicative of OHCHR access to survivors and witnesses on each side of the contact line.

8. Based on the cases documented by OHCHR from 14 March 2014 to 31 January 2017, there are no grounds to believe that sexual violence has been used for strategic or tactical ends by Government forces or the armed groups in the eastern regions of Ukraine, or by the Russian Federation in the Autonomous Republic of Crimea. Regardless of its scale, sexual violence, particularly in the context of a conflict, is a gross violation of physical integrity, and it may, under certain conditions, amount to torture or to cruel, inhuman and degrading treatment. Some of the documented cases, when linked to the armed conflict, could amount to war crimes.

9. The majority of cases of conflict-related sexual violence documented by OHCHR in Ukraine occurred in the context of the deprivation of liberty by Government forces or armed groups. In these cases, both men and women were subjected to sexual violence. Beatings and electrocution in the genital area, rape, threats of rape, and forced nudity were used as a method of torture and ill-treatment to punish, humiliate, or extract confessions. Furthermore, to increase the pressure, the perpetrators threatened to also detain or abduct, rape, injure or kill relatives of the victims, especially their children. In the territory controlled by armed groups sexual violence was also used to compel individuals deprived of liberty to relinquish property or perform other actions demanded by the perpetrators, as an explicit condition for their safety and release. The majority of these incidents date back to 2014-2015; nonetheless OHCHR continues to receive testimonies indicating that such practice still occurs on both sides of the contact line and in Crimea.

10. While deprivation of liberty posed the highest risk of sexual violence to an individual, OHCHR also identified cases of sexual abuse against civilians, mainly women, at the entry-exit checkpoints along the transport corridors across the contact line run by the Government forces, as well as the checkpoints run by armed groups.

11. The presence of Ukrainian armed forces and armed groups in populated areas also increases the risk of sexual violence against civilians. The deterioration of the economic situation, particularly in conflict-affected regions, combined with the destruction of community ties caused by the conflict and displacement, have compelled some people to use harmful survival strategies and coping mechanisms that may increase the risk of sexual violence and trafficking.

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<sup>4</sup> For more details on the use of terms victims and survivors see paragraph 24 of this report.

<sup>5</sup> For more details on definitions, see chapter II of this report.

12. Acts of sexual violence incur State responsibility, the responsibility of all parties to the conflict, as well as individual criminal liability. International standards require States to exercise due diligence to prevent, investigate and prosecute sexual violence perpetrated by either State or non-State actors. States are also required to ensure effective remedies to survivors, including access to justice and comprehensive support services.

13. Many cases of conflict-related sexual violence documented by OHCHR in Ukraine were associated with other human rights violations and abuses, such as unlawful killings, abduction or *incommunicado* detention of the victims, and destruction or looting of their property, which complicates documentation and investigation. The resulting charges rarely reflect the severity of the conduct, or the character of the crimes and their impact on victims, limiting the delivery of justice and access to an effective remedy.

14. OHCHR has noted prevailing impunity for human rights violations and abuses committed in the context of the conflict in Ukraine, not least with regard to sexual violence. This is partly due to the fact that the conflict is ongoing and that a part of Ukraine's territory remains under the control of armed groups, with no oversight by any State authority. The impunity also reflects a systemic decades-old accountability challenge that has never been fully addressed and continues to undermine public trust in the ability of institutions to hold perpetrators of crimes to account.

15. In addition, national legislation and legal practice regarding the prosecution of sexual violence is limited and is not fully in line with international standards and practice. Due to a number of gaps in legislation and a lack of capacity, acts of sexual violence are often recorded by law enforcement as other crimes such as bodily injury. Lawyers, police officers, prosecutors and judges lack knowledge of how to document, investigate and consider cases of conflict-related sexual violence, as well as with regards to allegations of ill-treatment and torture. Consequently, victims of sexual violence are often confronted with inaction from State authorities or armed groups who exercise control over certain areas.

16. Armed groups in the self-proclaimed 'Donetsk people's republic'<sup>6</sup> and the self-proclaimed 'Luhansk people's republic'<sup>7</sup> have an obligation to prevent and address sexual violence committed by their members. OHCHR is aware of some cases in which armed groups 'investigated' and addressed cases of sexual violence. They do not appear to provide effective remedy for the victims, as they were not taken by an independent and impartial body. Furthermore in some cases, such 'processes' have placed blame on the survivors, especially women. These also included discriminatory remarks towards women, reinforcing negative gender stereotypes.

17. Another problematic aspect is the lack of support available for victims. Overall, professionals in medical and social State institutions lack the specific knowledge and skills required to deal with survivors of torture and conflict-related sexual violence. Consequently, services for these individuals are provided by civil society organizations through donor-funded programmes. In addition, while high quality services are provided in urban centres, mostly in Kyiv. There is little or no assistance available in smaller towns and rural areas, which is especially critical for the life-saving post-exposure prophylaxis, which has to be taken within 72 hours.

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<sup>6</sup> Hereinafter referred to as 'Donetsk people's republic'.

<sup>7</sup> Hereinafter referred to as 'Luhansk people's republic'.

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18. The conflict has had a negative impact on the provision of services in territory controlled by armed groups, limiting access of survivors to needed services. While most medical and social institutions have continued to work, the quality of services has deteriorated due to the lack of medical professionals, shortages of necessary specialized equipment and medication. Survivors of conflict-related sexual violence living in territory controlled by armed groups are further affected by restrictions imposed by members of the armed groups, which severely limits civil society and humanitarian actors' ability to carry out their programmes, particularly those linked to protection and psycho-social support.

19. OHCHR welcomes the adoption by the Government of Ukraine of the National Human Rights Strategy and its Actions Plan and of the National Action Plan on "Women. Peace. Security",<sup>8</sup> which are to address some of the challenges identified in this report. While, the overall progress in their implementation so far has been limited, OHCHR notes the progress made by the Ministry of Defence in the implementation of the National Action Plan "Women. Peace. Security".

20. It is critical to revise national legislation and ensure a robust law enforcement and an independent judiciary, willing and able to prosecute war crimes, crimes against humanity, gross human rights violations and abuses, including sexual violence, in domestic courts. The constitutional amendments adopted in June 2016 provide an opportunity to reform the judiciary and advance the rule of law. In addition, proper documentation and investigation of all allegations of sexual violence and other human rights violations, guaranteeing rehabilitation services to survivors, and bringing perpetrators to justice are important elements of providing an effective remedy to victims, upholding international obligations, building a culture of accountability and rule of law and fostering sustainable peace.

21. Since 2015, OHCHR bolstered its technical cooperation activities, assisting the Government of Ukraine in operationalizing and fulfilling its obligations toward the promotion and protection of human rights, especially in addressing torture. This assistance is extended to the Government directly and by supporting partners, particularly civil society organizations. Through the United Nations Voluntary Fund for the Victims of Torture, OHCHR supports three civil society organisations providing services to victims of torture, including sexual violence. OHCHR has also been providing small grants to the other three NGOs, which document human rights violations and provide psycho-social and medical support to the survivors of torture. In close cooperation with the Ombudsperson's Office, OHCHR promotes the implementation of the Istanbul Protocol.<sup>9</sup>

## **II. Definitions and methodology**

22. The term "conflict-related sexual violence", which appears throughout the present report, is used as defined by the United Nations Security Council Resolution.<sup>10</sup> It refers to incidents or patterns of rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence of comparable gravity, against women, men, girls or boys, including

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<sup>8</sup> The National Action Plan "Women. Peace. Security" was adopted on 24 February 2016 toward implementing United Nations Security Council resolution 1325.

<sup>9</sup> For other examples of technical cooperation see 16<sup>th</sup> OHCHR report on the human rights situation covering the period from 16 August to 15 November 2016, para. 199-206.

<sup>10</sup> S/RES/1960 adopted on 16 December 2010.

as a tactic of war or tool of political intimidation committed by the parties to the conflict, which includes State and non-State actors. Incidents included in this report have a temporal, geographical and/or causal link with the armed conflict in Donetsk and Luhansk regions, and the occupation of the Autonomous Republic of Crimea.

23. Broader acts of gender-based violence, including domestic violence, that do not have this link are beyond the scope of this report. Research<sup>11</sup> suggest that the situation of conflict may lead to augmented level of domestic violence due to the breakdown of services and referral pathways, increased tolerance to violence in society, easier access to weapons, post-traumatic stress disorders among combatants. Service providers have shared with OHCHR some individual cases of domestic violence, which could have a causal link to conflict. However lack of comprehensive baseline and the fact that police statistics on cases of domestic violence are not disaggregated and cannot be searched for instance on the basis of use of weapons or if they took place in the families of armed actors or internally-displaced persons, prevents from ascertaining that the armed conflict has contributed to an increase of domestic violence in Ukraine.

24. Victims of conflict-related sexual violence include those who, individually or collectively, were subjected to such violence (survivors), but also their family members, such as children, parents or partners, children born as a result of a pregnancy from rape, and other people who depend on the victim.<sup>12</sup>

25. The report is based on information that OHCHR collected through interviews with victims, including survivors (all adult), witnesses, relatives of victims, their lawyers; information shared with OHCHR by service providers and organisations providing services to survivors; analysis of corroborating material confidentially shared with OHCHR; official records; open-source documents and video, photo and audio materials (including some produced by alleged perpetrators); court documents; and other relevant and reliable materials.

26. Based on the OHCHR fact-finding methodology, the standard of proof it applies is that there are “reasonable grounds to believe” that a particular incident occurred or that a given pattern of violations prevailed.<sup>13</sup> OHCHR has

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<sup>11</sup> Links between domestic violence and armed conflict: Report from a Field Trip in Lebanon 7-17, 2010. Kvinna till Kvinna. Available at: <http://www.equalpowerlastingpeace.org/resource/links-between-domestic-violence-and-armed-conflict/>. “Guidelines for Gender-Based Violence Interventions in Humanitarian Settings – Focusing on Prevention of and Response to Sexual Violence in Emergencies,” United Nations Inter-Agency Standing Committee Task Force on Gender and Humanitarian Assistance, September 2005, p. 1; “Theories of Sexual Assault,” Stop VAW website, The Advocates for Human Rights, 1 February 2006; Ward, Jeanne and Marsh, Mendy, “Sexual Violence against Women and Girls in War and Its Aftermath – Realities, Responses, and Required Resources,” A Briefing Paper for the Symposium on Sexual Violence in Conflict and Beyond, United Nations Population Fund, June 2006; Rehn, Elisabeth and Johnson Sirleaf, Ellen, “Women, War and Peace – The Independent Experts’ Assessment on the Impact of Armed Conflict on Women and Women’s Role in Peace-building,” United Nations Development Fund for Women, 2002; “Broken Bodies Broken Dreams – Violence against Women Exposed,” United Nations Office for the Coordination of Humanitarian Affairs and Integrated Regional Information Networks, 2005; “Economic, Social and Cultural Rights and Women – A Fact Sheet,” Amnesty International, 20 July 2005.

<sup>12</sup> Guidance note of the Secretary General of the United Nations Reparations for Conflict-Related Sexual Violence, June 2014. Available at: <http://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>.

<sup>13</sup> It should be highlighted that under international standards the testimony of a single victim is sufficient, if reliable and credible. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 IT/32/Rev.43 24 July 2009. The Rules of

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exercised due diligence to corroborate the validity of information received, and detected a number of fabricated allegations disseminated through the internet and other media, or perpetuated in communities.<sup>14</sup>

27. OHCHR is committed to the protection of its sources and therefore ensures the preservation of their confidentiality. It therefore does not disclose any information that may lead to the identification of sources, unless the latter have provided their informed consent. OHCHR also systematically assesses the potential risks of harm and retaliation against its sources. Accordingly, some documented cases were either not included or anonymized.

28. OHCHR faced constraints in collecting and/or verifying information regarding cases of conflict-related sexual violence. It was unable to examine all allegations brought to its attention, particularly in the territory controlled by armed groups, due to limited access to some areas for security reasons, rare access to conflict-related detainees, and reluctance of people to talk for fear of reprisals. In addition, due to its particular nature, sexual violence often takes place with no witnesses or only witnesses acting as accomplices.

29. While not having physical access to the Autonomous Republic of Crimea, OHCHR monitored the human rights situation on the peninsula, utilizing a network of contacts and conducting monitoring visits to the administrative line, as well as interviewing victims and witnesses of human rights violations that moved to mainland Ukraine.

30. As mentioned in the Executive Summary, this report therefore presents a sample of emblematic cases that illustrate broader patterns and trends observed, based on OHCHR access to victims and witnesses on each side of the contact line. Therefore the number of cases included in this report may not reflect the actual scale of violations or abuses, also bearing in mind that everywhere, cases of sexual violence tend to be under-reported.

### **III. Legal Framework**

#### **A. Applicable international law**

31. Under international law, rape and other forms of sexual violence can constitute and comprise elements of war crimes, crimes against humanity, genocide, torture and other human rights violations or abuses and violations of humanitarian law, depending on the circumstances. Acts of sexual violence incur State responsibility, the responsibility of the parties to the conflict, as well as individual criminal liability.<sup>15</sup>

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Procedure and Evidence reproduced from the Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002. Rule 96 of the ICTY and Rules 63 (4), 70 and 71 of the ICC provide that corroboration of the testimony of a victim by additional witness testimony or physical evidence is not required for proving crimes of sexual violence. These rules ensure that the crime of sexual violence would not fall under the stringent evidentiary standards applied to other types of crimes, thus addressing a problem experienced in some domestic systems.

<sup>14</sup> For example, in 2014, HRMMU followed up on a widely reported allegation of six women, victims of sexual violence, being treated in Kharkiv hospital. Following a visit to the hospital and verification through a network of partners, HRMMU found that there were no such patients. Similarly, in March 2015, in Debaltseve (controlled by armed-groups), the residents reported to HRMMU the allegations of female bodies found in a pond after Ukrainian soldiers had retreated. HRMMU, however, did not find information corroborating the allegations.

<sup>15</sup> International Criminal Court (ICC) Statute, Article 25(3) (Individual criminal responsibility) and Article 28 (Responsibility of commanders and other superiors).



32. International standards recognize all forms of sexual violence as human rights violation and require States to exercise due diligence to prevent, investigate and prosecute such acts perpetrated by State or non-State actors.

### 1. Applicable international human rights law

33. As a gross violation of physical integrity, sexual violence<sup>16</sup> is prohibited by a number of international human rights instruments, to which Ukraine is a party. The articles 7, 9 and 10 of the International Covenant on Civil and Political Rights provide that: “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”, “everyone has the right to liberty and security of person” and that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. The Covenant is explicit in affirming “the equal right of men and women to the enjoyment” of all of the rights it covers. The Convention on the Rights of the Child requires States Parties to protect children from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse.” The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) recognizes sexual violence as a particular form of discrimination, which should be interpreted without adverse distinction as to gender. General Recommendation 30 by the Committee on the Elimination of All Forms of Discrimination against Women<sup>17</sup> on Women in Conflict Prevention, Conflict and Post-Conflict Situations underscores States’ obligations to prevent, investigate and punish trafficking and sexual and gender-based violence.

34. The Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person... when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity for a number of impermissible purposes including interrogation, intimidation, punishment, retaliation, humiliation and discrimination of any kind.” As per this definition, rape and sexual violence can amount to torture or to cruel, inhuman and degrading treatment.

35. The prohibition of torture and cruel, inhuman and degrading treatment is a peremptory norm of international law from which no derogation is permitted,<sup>18</sup> even in times of public emergency, terrorism or armed conflict.<sup>19</sup> It also must not be limited nor balanced against any other right or concern. Accordingly, the notification by the Government of Ukraine to the United Nations Secretary-General, 20 October 2015, that the application and implementation by Ukraine of its obligations under 16 treaties, including the Convention against Torture, “*is limited and is not guaranteed*” on territory deemed to be occupied and uncontrolled, and that this situation will continue to apply until the complete restoration of Ukraine’s sovereignty over its territory,

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<sup>16</sup> Sexual violence is any act of sexual nature, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts of trafficking, or otherwise directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.

<sup>17</sup> Committee on the Elimination of Discrimination against Women, 18 October 2013, CEDAW/C/GC/3.

<http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf>.

<sup>18</sup> Convention against Torture, Article 2(2). Also see General Comment No.2, ‘Implementation of Article 2 by State Parties’, UN Doc. CAT/C/GC/2/CRP/1/Rev.4 (2007), Advance Unedited Version at Para.1.

<sup>19</sup> Interpretation of Torture in the Light of the Practice and Jurisprudence of International Bodies. United Nations Voluntary Fund for the Victims of Torture. Available at: [http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation\\_torture\\_2011\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf).

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runs contrary to the non-derogable nature of the prohibition against torture and cruel, inhuman or degrading treatment or punishment.

36. Jurisprudence of international criminal tribunals<sup>20</sup> and of regional human rights courts<sup>21</sup>, as well as views<sup>22</sup> of the Committee against Torture and the findings of the United Nations Special Rapporteurs on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>23</sup> found rape to be constitutive of torture as infliction of severe pain and suffering, when committed by a public official or another person acting in an official capacity.

37. The gravity of torture finds a further consideration in States' obligations to adopt effective legislative, administrative, judicial and/or other measures to prevent acts of torture or other ill-treatment in any territory under their jurisdiction<sup>24</sup>, the obligation to criminalize acts of torture<sup>25</sup>, and the customary international law obligation to investigate, prosecute and punish all acts of torture and other ill-treatment as codified, inter alia, in the Convention against Torture,<sup>26</sup> in a comprehensive, effective, prompt and impartial manner. The Istanbul Protocol<sup>27</sup> contains internationally recognized standards and procedures on how to recognize and document symptoms of torture so the documentation may serve as valid evidence in court.

38. In light of the above, sexual violence constitutes a human rights violation if (1) it is committed by a public official, or at the instigation or with the consent or acquiescence of a public official, (2) if the State fails to ensure that sexual violence is effectively investigated, and perpetrators are prosecuted and punished<sup>28</sup> in accordance with the gravity of the offence, and (3) where the State fails to exercise due diligence to protect persons from sexual violence by State or non-State actors.

39. International human rights law, in the form of ratified treaties and customary norms, applies throughout Ukraine for the whole period covered by this report. Despite lacking effective control over certain parts of its territory, the Government of Ukraine has the obligation to document and investigate allegations of torture, ensure that perpetrators are duly prosecuted, and provide redress to victims.<sup>29</sup>

40. While non-State actors, including armed groups, cannot become parties to international human rights instruments, it is increasingly accepted that those exercising government-like functions and control over a territory must respect

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<sup>20</sup> *Prosecutor v. Kunarac, Kovač and Vuković*, Case No. IT-96-23 and IT-96-23/1-A, para. 150; and *Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo*, Case No. IT-96-21-I, 16 November 1998 (*Čelebići Judgment*), para. 493.

<sup>21</sup> European Court of Human Rights, *Aydin v. Turkey*, Communication 23178/94, 25 September 1997.

<sup>22</sup> *V.L. v. Switzerland*, Communication No. 262/2005, 20 November 2006, UN Doc. CAT/C/37/D/262/2005 (2007), para. 8.10 and *C.T. and K.M. v. Sweden*, Communication No. 279/2005, 17 November 2006, UN Doc. CAT/C/37/D/279/2005 (2007).

<sup>23</sup> United Nations Special Rapporteur on Torture on torture and other cruel, inhuman or degrading treatment or punishment report before the Human Rights Council, 15 January 2008, A/HRC/7/3, para 36.

<sup>24</sup> Convention against Torture, Articles 2(1) and 16(1).

<sup>25</sup> Convention against Torture, Article 4.

<sup>26</sup> Convention against Torture, Article 12.

<sup>27</sup> Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. OHCHR, 2014. Available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

<sup>28</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016. Available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/31/57](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/31/57).

<sup>29</sup> Committee against Torture. Concluding observations on the sixth periodic report of Ukraine. CAT/C/UKR/CO/6, 12 December 2014. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/UKR/CO/6&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/UKR/CO/6&Lang=En).

human rights standards when their conduct affects the human rights of individuals under their control.<sup>30</sup>

41. In line with General Assembly resolution 71/205<sup>31</sup> adopted on 19 December 2016, which recognizes the Russian Federation as the occupying power in the Autonomous Republic of Crimea, the human rights obligations of the Russian Federation are applicable to this territory. Indeed, the scope of application of international human rights law does not depend on a State's territorial limits, but also on the exercise of its jurisdiction or effective control, even if not situated in that State's sovereign territory. The resolution also urges the Russian Federation to "take all measures necessary to bring an immediate end to all abuses against residents of Crimea, [...], arbitrary detention, torture and other cruel, inhumane or degrading treatment,..." (2(b)).

42. The United Nations Security Council has adopted seven resolutions pertaining to women, peace and security,<sup>32</sup> four of which focus specifically on conflict-related sexual violence. The first of these resolutions, Resolution 1325 (2000) on Women, Peace and Security, calls on all parties to conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, in situations of armed conflict.

43. Security Council Resolution 1820 (2008), recognized sexual violence as a tactic of war and a threat to global peace and security, requiring an operational security, justice and service response. It further recognized that rape and other forms of sexual violence can constitute war crimes, crimes against humanity and/or constitutive acts of genocide. Resolution 1888 (2009) created the Office of the Special Representative of the Secretary-General for Sexual Violence in Conflict, and Resolution 2106 (2013) comprehensively addressed the issue, urging increased efforts against impunity for perpetrators of sexual violence against female or male victims.

## 2. Applicable international humanitarian law

44. International humanitarian law regulates the conduct of parties to the armed conflict, means and methods of warfare and protects those who do not or no longer directly participate in hostilities. In situations of armed conflict, all parties to the conflict are bound by the applicable rules of international humanitarian law, whether customary or treaty-based.<sup>33</sup>

45. Rape and other forms of sexual violence are prohibited in both international and non-international armed conflicts,<sup>34</sup> including under

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<sup>30</sup> Except for Article 4(1) of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, which directly applies to armed groups: "[a]rmed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years".

<sup>31</sup> A/RES/71/205 Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine).

<sup>32</sup> S/RES/1325 (2000), S/RES/1820 (2008), S/RES/1888 (2009), S/RES/1889, S/RES/1960 (2010), S/RES/2106 (2013), S/RES/2122 (2013), S/RES/2242 (2015)

<sup>33</sup> The provisions of common Article 3 of the four Geneva conventions bind all parties to non-international armed conflicts, including organized non-State armed groups. Common Article 3, which reflects elementary considerations of humanity, is supplemented by a number of other treaty provisions, and by customary humanitarian law governing the conduct of parties to non-international armed conflicts.

<sup>34</sup> The prohibition of "outrages upon personal dignity", "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" is recognized in Additional Protocols I and II, as well as article 3 of the Fourth Geneva Convention, as a fundamental guarantee for civilians and persons *hors de combat*. Article 75 of Additional Protocol I specifies that this prohibition covers in particular "humiliating and degrading treatment, enforced prostitution and

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customary law.<sup>35</sup> Article 3 common to the four Geneva Conventions prohibits “violence to life and person”, including cruel treatment and torture and “outrages upon personal dignity”, which includes sexual violence.<sup>36</sup>

### 3. Applicable international criminal law

46. Ukraine signed the Rome Statute of the International Criminal Court in 2000, but has not ratified it. In 2001 Ukraine’s Constitutional Court found the Statute incompatible with the Constitution.<sup>37</sup> On 9 April 2014, however, the Government made a declaration recognizing the jurisdiction of the International Criminal Court over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014 (the Maidan events). On 8 September 2015, the Government accepted the jurisdiction of the Court with respect to alleged crimes committed on its territory since 20 February 2014. The related declarations were submitted under article 12(3) of the Rome Statute, which enables a State not party to the Statute to accept the exercise of jurisdiction of the Court. Following the declarations<sup>38</sup>, the Office of the Prosecutor of the International Criminal Court is conducting a preliminary examination covering all crimes committed after 20 February 2014.

47. The Rome Statute of the International Criminal Court is the first international instrument to expressly define various forms of sexual violence as underlying acts of both crimes against humanity and war crimes committed during international and non-international armed conflicts.

48. These acts include rape<sup>39</sup>, sexual slavery<sup>40</sup>, enforced prostitution<sup>41</sup>, forced pregnancy<sup>42</sup>, enforced sterilization<sup>43</sup>, and other forms of sexual violence of comparable gravity<sup>44</sup>. In these cases a perpetrator commits an act of a sexual

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any form of indecent assault”, while article 4 of Additional Protocol II specifically adds “rape” to this list. Article 27 of the Fourth Geneva Convention states that all protected persons “shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”.

<sup>35</sup> Henckaerts, Doswald-Beck, Customary International Law, Volume II., Rules 93, 94, 134, and 156.

<sup>36</sup> Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949. Commentary of 2016 Article 3 : Conflicts not of an international character, para. 696.

<sup>37</sup> On 2 June 2016, the Parliament of Ukraine adopted the amendments to the Constitution of Ukraine regarding the judiciary. The amendments (article 124(6)) allow for ratification by Ukraine of the Rome Statute of the International Criminal Court, although it led to the postponement of the entry into force of this provision for three years. The amendments entered into force on 30 September 2016.

<sup>38</sup> On 25 April 2014, the Prosecutor of the International Criminal Court opened a preliminary examination into the Maidan events. The preliminary findings suggest that the crimes that occurred during those events may not fall under the Court’s jurisdiction. See International Criminal Court. For more details see Report on Preliminary Examination Activities (2015), para. 97, 98 and 101.

<sup>39</sup> Rome Statute, Article 8(2)(e)(vi)-1, War crime of rape, whose elements are defined as: (1) The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body; (2) The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

<sup>40</sup> Rome Statute, Article 7(1)(g)-2.

<sup>41</sup> Rome Statute, Article 7(1)(g)-3.

<sup>42</sup> Rome Statute, Article 7(1)(g)-4.

<sup>43</sup> Rome Statute, Article 7(1)(g)-5.

<sup>44</sup> Rome Statute, Article 7(1)(g)-6 - Crime against humanity of sexual violence. 1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused

nature against a person, or causes another to engage in such an act, by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, or by taking advantage of a coercive environment or a person's incapacity to give genuine consent.<sup>45</sup>

49. An act of a sexual nature is not limited to physical violence, and may even not involve any physical contact, for example forced nudity or forcing to observe an act of sexual violence.<sup>46</sup>

50. In accordance with international jurisprudence, sexual and gender-based crimes may constitute acts of genocide or other acts of crimes against humanity or war crimes, such as torture, mutilation, persecution, inhuman acts, and outrages upon personal dignity.<sup>47</sup>

51. For committing the crimes within the jurisdiction of the International Criminal Court, the Rome Statute envisages various forms of responsibility, including that of commanders and superiors<sup>48,49</sup>. Under article 25, a person shall be criminally responsible if a person commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible, orders, solicits or induces the commission of such a crime which in fact occurs or is attempted; aids, abets or otherwise assists or contributes in a commission. Under article 28, a military commander or person effectively acting as a military commander, shall be criminally responsible for crimes where they either knew or should have known that the forces were committing or about to commit such crimes; and the commander failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution. This applies to all parties to the conflict in Ukraine.

### C. Applicable national legislation

52. National legislation and legal practice regarding the prosecution of sexual violence is rather limited in Ukraine and does not comply with international standards and practice. Due to various gaps, resulting charges do not always reflect the severity of the conduct, or the character of the perpetrated crimes and their impact on victims, thereby limiting the effective delivery of justice and effective remedies.

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by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent. 2. Such conduct was of gravity comparable to the other offences in article 7, paragraph 1(g), of the Statute. 3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct. ....

<sup>45</sup> Rule 70 of the Rules of Procedure and Evidence of the ICC outlines the principles of evidence in cases of sexual violence. Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force or coercion, or taking advantage of a coercive environment, undermined the victim's ability to give voluntary and genuine consent. Similarly, consent cannot be inferred by reason of any words or conduct of a victim where the victim was incapable of giving genuine consent, or by reason of silence or lack of resistance. This includes, for example, where the victim engages in an act of a sexual nature as a result of fear of violence, duress, detention, psychological oppression or abuse of power.

<sup>46</sup> International Criminal Court Policy Paper in Sexual and Gender-Based Crimes. June 2014. Available at: <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>.

<sup>47</sup> See articles 7(1)(f), 7(1)(h), 7(1)(k), 8(2)(a)(ii), 8(2)(b)(x), 8(2)(b)(xxi), 8(2)(c)(i), and 8(2)(c)(ii) of the Rome Statute.

<sup>48</sup> Article 25 (3) of the Rome Statute.

<sup>49</sup> Article 28 of the Rome Statute.

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53. There is no explicit definition of gender-based and/or sexual violence in Ukrainian legislation. Article 1 of the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” defines sexual harassment as sexual acts expressed verbally (threats, intimidation, indecent remarks) or physically (touching, slapping) which humiliate or insult persons who are subordinate in labour, work, financially, or otherwise. A victim of sexual harassment may claim compensation for civil damages through court, but the offence is not penalized as a criminal offence.

54. The Criminal Code of Ukraine includes five articles pertaining to sexual violence: on rape (article 152), on violent unnatural gratification of sexual desire (article 153), on compulsion to sexual intercourse (article 154), on sexual intercourse with a sexually immature person (article 155), and on debauchery of minors (article 156). Articles 152, 153, 155, and 156 may be applicable regardless of the relation of the victim to the perpetrator. Article 154 applies only to situations where a victim is financially dependent on a perpetrator, or is subordinate to the perpetrator; this is rarely applied to sexual violence in conflict setting. The Article 156 can be applied only if the victim is younger than 16 years old. The Criminal Code includes the crimes of sexual exploitation and forced pregnancy but only in connection with human trafficking (article 149), thereby limiting the application. Depending on the circumstances, the above-mentioned crimes may be punishable from three to 15 years of imprisonment.

55. National law and jurisprudence defines rape as sexual intercourse between individuals of different sex against the will of a victim, combined with violence, threats of violence, or committed by taking advantage of the victim’s helpless condition.<sup>50</sup> This definition does not cover same-sex rape, thus unless the perpetrator is a woman, men and boys will not be considered as victims of rape. Furthermore, the “helpless condition”<sup>51</sup> is interpreted by investigators and courts in a restrictive manner, lacking any notion of coercive circumstances or inability to give genuine consent, which is of particular importance in contexts of armed conflict.

56. According to the Criminal Code, the penetration of objects into a genital or anal opening, instances of sexual violence when a perpetrator and a victim are of the same sex, or other violent acts of sexual nature, can only be considered “violent unnatural gratification of sexual desire”, and only if the intent of the perpetrator to satisfy his or her sexual desire can be demonstrated.<sup>52</sup>

57. The Criminal Code contains two articles which could be applied specifically to cases of conflict-related sexual violence. Paragraph 1 of article 433 envisages criminal responsibility for violence against the civilian population in a conflict area, which may include sexual violence, and is punishable with three to eight years of imprisonment. Article 438 foresees criminal responsibility for the violation of laws and customs of war, which

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<sup>50</sup> Criminal Code of Ukraine, article 152 and Resolution of the Plenum of the Supreme Court of Ukraine Nr.5 from 30 May 2008 On the Court Practice in Cases about Crimes against Sexual Freedom and Sexual Inviolability of a Person, para. 1.

<sup>51</sup> Resolution of the Plenum of the Supreme Court of Ukraine Nr.5 from 30 May 2008 On the Court Practice in cases about crimes against Sexual Freedom and Sexual Inviolability of a Person, paragraph 5. State of the victim should be recognized as helpless if as a result of their minor or elderly age, physical or mental disability, being ill or unconscious or other reasons could not understand the nature and meaning of the actions committed against them or could not fight back.

<sup>52</sup> Resolution of the Plenum of the Supreme Court of Ukraine Nr.5 from 30 May 2008 On the Court Practice in cases about crimes against Sexual Freedom and Sexual Inviolability of a Person - <http://zakon3.rada.gov.ua/laws/show/v0005700-08>.

includes cruel treatment of prisoners of war or civilians (and thus may include sexual violence), and shall be punishable by imprisonment from 8 to 12 years.

58. The Criminal Code of Ukraine mainly focuses on individual criminal responsibility for physical commission of a crime or aiding, abetting or otherwise assisting the commission of the crime. Articles 426 (omission of military authority – failure to prevent or refer a case to investigation, or other failure to act by a person in authority which caused significant harm) and 426<sup>1</sup> (actions in excess of military authority) also foresee command responsibility, which includes elements of omission liability, and is of particular importance in the context of armed conflict. These articles however are mainly applied in cases when commanders commit crimes against their subordinates, and are rarely applied to conduct against civilians.<sup>53</sup> According to the Prosecutor General's Office, as of 26 December 2016, there had been no investigations into incidents of sexual violence which took place after 15 April 2014<sup>54</sup> under these articles.<sup>55</sup>

#### **IV. Documented patterns and trends of conflict-related sexual violence in Ukraine**

59. Based on the cases documented by OHCHR, there are no grounds to believe that sexual violence has been used for strategic or tactical ends by Government forces or the armed groups in the eastern regions of Ukraine, or by the Russian Federation in the Autonomous Republic of Crimea. The majority of cases documented by OHCHR illustrate that sexual violence has been used as a method of torture and ill-treatment in the context of detention related to the armed conflict in eastern Ukraine, as well as in the Autonomous Republic of Crimea. The most frequent forms of sexual violence used in such situations are beatings and electrocution in the genital area, threats of rape, forced nudity and rape.

60. OHCHR found that sexual violence has been perpetrated against both men and women deprived of their liberty on conflict-related charges and, in some cases, against their relatives. The purpose is usually to punish and humiliate them, extract confessions, and/or compel them to relinquish property or perform other actions demanded by the perpetrators, as an explicit condition for their safety and release. The grounds for detention and profile of the victims vary depending on whether the incidents occurred in territory under the control of the Government or of the armed groups.

61. While situations of deprivation of liberty pose the highest risk of sexual violence, OHCHR also identified other factors which increase the danger of conflict-related sexual violence, especially coupled with impunity, collapse of law and order, lack of clear orders and instructions prohibiting sexual violence, and insufficient complaint and reporting mechanisms. Such risk factors include, but are not limited to restrictions on freedom of movement across the contact line through checkpoints and the presence of military and armed group forces in populated areas. Women are particularly vulnerable in such circumstances.

62. Deterioration of economic situation in conflict-affected regions, paired with the destruction of community ties, can expose people or force them to

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<sup>53</sup> Meeting with Military Prosecutor, 2 June 2016.

<sup>54</sup> Beginning of the "Anti-Terrorist Operation".

<sup>55</sup> Letter from the Prosecutor General's Office to OHCHR dated 23 December 2016.

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resort to harmful survival strategies and coping mechanisms, which may increase exposure to the risk of sexual violence or trafficking.

63. OHCHR received several allegations that along the contact line, due to lack of income, women and some girls, were resorting to harmful survival practices, for instance engaging in sexual intercourse with members of armed actors in exchange for money or food.<sup>56,57</sup>

64. While the overall birth rate in the conflict-affected regions decreased due to the displacement, some maternity hospitals along the contact line reported an increased number of births by almost two times compared to 2015. According to doctors, pregnancies increasingly occur even among women above the age of 40 years, who were registered in the hospital as infertile for many years.<sup>58,59</sup> Some of these pregnancies<sup>60</sup> could be attributed to the presence of armed actors in the populated areas and in some cases sexual violence.

#### A. Cases of conflict-related sexual violence in territory controlled by the Government

*“They gave me a paper and a pen and told me to write. When I started objecting that such things had not happened, ... another man with red hair entered the room. He sat in front of me and started playing with his handgun pointing it at me. I yelled and dropped the pen and paper refusing to write. Then he told me that if I refused to write, they would bring my minor daughter in and will make me watch how they take turns one after another to rape her. After that I filled in eight pages with the text which the man dictated to me”.*

- woman detained on conflict-related charges

*“I was interrogated. They put a sharp object to my neck and threatened to cut off my head. Then someone pulled down my trousers, put the blade against my genitals and said they would cut it into four pieces. Then they continued beatings until I made a video confession.”*

- man detained on conflict-related charges

#### 1. Conflict-related sexual violence in the context of detention

65. In territory controlled by the Government of Ukraine, OHCHR identified a pattern of sexual violence perpetrated in places of detention against individuals perceived to be a part of, or affiliated with armed groups, in order to punish and humiliate them, and / or extract confessions from them.<sup>61</sup> While

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<sup>56</sup> Gender-based violence in the conflict-Affected Regions of Ukraine: analytical report. Kyiv, November 2015, Ukrainian Centre for Social Reforms, commissioned by UNFPA, pp.4. 35.49. Available at:

[http://reliefweb.int/sites/reliefweb.int/files/resources/gbv\\_study\\_2015\\_final\\_eng.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/gbv_study_2015_final_eng.pdf).

<sup>57</sup> HRMMU field visit to the town along the contact line, 13 July 2016.

<sup>58</sup> In an interview published on 27 December 2016, the chief doctor of the maternity hospital in Government-controlled Avdiivka, Donetsk region, reported that “almost all women, who were registered in the hospital as infertile gave birth, even those over 40 years old”. She added that as of November 2016 there were 97 births, against 46 in 2015. The interview is available at: <https://life.pravda.com.ua/society/2016/12/27/221926/>.

<sup>59</sup> HRMMU interview. 17 December 2016.

<sup>60</sup> As there may be infertility in male, as well as female, the change of partner may lead to change in condition.

<sup>61</sup> These individuals are mostly detained on the following charges: actions aimed at forceful change or overthrow of the constitutional order or takeover of Government (article 109 of the Criminal Code of Ukraine); trespass against territorial integrity and inviolability of Ukraine



the victims were mostly young and middle-aged men, threats were directed at female members of their families; at times the perpetrators even detained female family members for a short time, to exert pressure on the male detainees. In most cases, such threats were used to force the victim to “confess” or otherwise cooperate with the investigators, security or military actors.

66. In many cases, sexual violence amounted to torture, causing severe physical pain and mental suffering. Rape, threats of rape, beatings and electrocution of genitals were often used as an interrogation technique. Such violations most often perpetrated against individuals, mainly men, detained by the Security Service of Ukraine (SBU) and volunteer battalions. The majority of these incidents date back to 2014-2015; nonetheless OHCHR continues to receive testimonies indicating that such practice still occurs.

67. The United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>62</sup> underscored that custodial sexual violence “must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of the victim”.

68. In May 2014, members of the “Azov” battalion, who claimed to be acting upon the orders of SBU, abducted a woman near her house in Zaporizhzhia region. They subjected her to threats and torture which lasted for four to five hours. Her captors, who were all masked, bound her hands and legs with zip ties tightened by a metal chain, beat her with their feet and with the butts of their guns and forced needles under her nails. She was also subjected to the ‘swallow’ torture method.<sup>63</sup> One of her captors threatened to gang rape her by subjecting to oral and vaginal penetration. One of the perpetrators, believed by the victim to be an SBU officer, ordered him to stop. The victim was released on the same day.

69. A medical volunteer for the armed groups of the ‘Donetsk people’s republic’ was detained by Ukrainian forces in July 2014 along with four other individuals. She and another female detainee were regularly threatened with rape, and were once ordered to undress and interrogated by male soldiers while standing naked and blindfolded. On 2 August 2014, the woman was released.<sup>64</sup>

70. A man arrested by Ukrainian forces in November 2014 while visiting his family on the Government-controlled part of Donetsk region, was subjected to electroshocks (with wires attached to his fingers and genitals), mock executions, and threatened with rape and being cut into pieces.<sup>65</sup>

71. In November 2014, Ukrainian forces arrested a man in the Government-controlled village of Soloviove (Donetsk region).<sup>66</sup> He was brought to the

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(article 110); high treason (article 111); trespass against life of a statesman or a public figure (article 112); sabotage (article 113); espionage (article 114); intentional homicide (article 115); act of terrorism (article 258); involvement in a terrorist act (article 258-1); public incitement to commit a terrorist act (article 258-2); creation of a terrorist group or organization (article 258-3); facilitating a terrorist act (article 258-4); financing of terrorism (article 258-5); and creation of unlawful paramilitary or armed formations (article 260). In rare cases, articles 437 (planning, preparing and waging aggressive war or military conflict) and 438 (violation of law and customs of war) have been applied.

<sup>62</sup> United Nations Special Rapporteur on Torture report before the Human Rights Council, 15 January 2008, A/HRC/7/3, para 34-35.

<sup>63</sup> A method of torture, otherwise known as “strappado”, whereby she was hung up by her arms in a position causing severe physical pain. Several times, she was lifted by the chain and forcefully dropped on the floor.

<sup>64</sup> HRMMU interview, 14 October 2014.

<sup>65</sup> HRMMU interview, 22 June 2015.

<sup>66</sup> HRMMU interview, 4 June 2015.

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village of Pisky, where he was kept in a basement for two days. Four masked men kicked him and beat him with a wooden board, subjected him to electric shocks and pointed a gun to his head. He was also threatened with sexual violence.

72. On 23 December 2014, unidentified armed people arrested a woman at her house in Krasnoarmiisk district (Donetsk region) and took her to the town of Kramatorsk (Donetsk region) where she was kept for two days in a basement.<sup>67</sup> She was threatened with sexual violence and forced to sign a confession, which was video-recorded, stating that her sons were members of the armed groups and that she had transmitted information to them about Ukrainian military vehicles. She was then transferred to the Kharkiv SBU premises<sup>68</sup> where she spent almost two months, without any contact with the outside world. No official charges were ever brought against her and she was never presented in court. In February 2015, she was released.

73. In June 2015, a woman<sup>69</sup> was taken from her house by 10 masked armed men in black uniforms without insignia wearing body armour and helmets. She was brought to the basement of an unfinished brick building, where she was handcuffed to a large pipe in a crucified position. Two men kicked her on her head and body and beat her with their fists and a metal tube. They threatened to rape and kill her, demanding her to confirm her relationship to people she did not know. They did not give her any food or water and did not allow her to use the toilet for approximately 24 hours. Later she was transferred to the pre-trial detention facility. As of 15 January 2017, she was found guilty, sentenced and is in detention.

74. A man formerly involved in the armed groups of the ‘Luhansk people’s republic’ and his wife were arrested at their home by police on 13 April 2015, and taken to another town in Luhansk region. Both were ill-treated and tortured by police officers, and the man was threatened that he would be raped with a truncheon. He was then brought to the corridor from where he could see his wife in another room and noticed her sweater was torn. One of the officers asked him, “Shall we rape her?” He begged for his wife to be released and agreed to confess to anything.<sup>70</sup> His wife was released on 14 April 2015 and while she said to OHCHR she was not subjected to sexual violence, she was under constant fear, “always guarded by at least two men”.<sup>71</sup>

75. OHCHR also documented a number of cases of women detained in 2015, who were tortured and threatened that their minor daughters would be raped in front of them. A woman<sup>72</sup> arrested on 19 January 2015 by 10 masked men wearing camouflage uniforms, was kept for more than a week in the basement of an SBU building, where she was beaten and tortured with electric shocks and burning plastic. The perpetrators threatened to rape her daughter if she refused to confess of having supported the armed groups in 2014.

76. In the spring of 2016, a man permanently residing in the areas controlled by armed groups was arrested by eight masked camouflaged individuals under suspicion of involvement with armed groups. The next day, he was taken to an abandoned building, where he was interrogated. The perpetrators undressed him and tied his legs and arms behind his back to a metal cage. One of them took a ramrod (a metal rod used to clean a gun

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<sup>67</sup> HRMMU interview, 22 July 2015.

<sup>68</sup> The only official SBU detention facility is SBU SIZO in Kyiv; all other SBU detainees shall be held in general SIZOs. In 2014-2016, OHCHR documented many cases of conflict-related detainees illegally kept in SBU premises in Kharkiv.

<sup>69</sup> HRMMU interview, 26 May 2016.

<sup>70</sup> HRMMU interview, 24 March 2016.

<sup>71</sup> HRMMU interview, 29 March 2016.

<sup>72</sup> HRMMU interview, 15 June 2016.

muzzle) and started inserting it into the man's urethra, causing the victim severe pain. A second perpetrator recorded the torture on his mobile phone. They then beat the victim and threatened to upload the recorded video on the victim's social media page. The victim signed a confession and admitted to his "guilt".<sup>73</sup> The victim has been sentenced and is now in detention.

77. On 5 May 2016, in an incident that involved the use of excessive force, SBU arrested a man in one of the southern regions of Ukraine and transferred him to an SBU building while he was unconscious. He was later brought to an office where he was stripped naked and fastened to a radiator. For two days, four SBU officers forced him to kneel, insulted and humiliated him, hit him on the head, kidneys, groin, and applied electric shocks to his tongue. Most of this time he was hooded with a plastic bag, and was denied food and water.<sup>74</sup>

## **2. Conflict-related sexual violence at Government checkpoints**

78. The introduction of the Temporary Order<sup>75</sup> in January 2015 severely curtailed civilians' freedom of movement across the contact line by restricting such movement to especially designated transport corridors and requiring special permits. As of January 2017, there were only five operational transport corridors used on average by 25,000 people daily. With long queues at all entry-exit checkpoints, civilians spend hours, sometimes nights, at the checkpoints. While there is no official gender-disaggregated data, it has been observed that the majority of civilians crossing the contact line observed are older persons, women and families with children.

79. Civilians often complain about arbitrary procedures at the checkpoints, associated with corruption or other illegal practices. In June 2015, OHCHR also received a few allegations of sexual violence and harassment of women (civilians and humanitarian workers) at checkpoints.<sup>76</sup> As most victims would have to regularly travel across the contact line, they were afraid to report such incidents or did not consent for OHCHR to publicly report or advocate on their cases for fear of retaliation.

80. In 2016, OHCHR was able to document emblematic cases of sexual violence at checkpoints run by Government entities. In March 2016, three women<sup>77</sup> who were driving to Toretsk (Donetsk region) to receive humanitarian aid were stopped at a checkpoint controlled by the 'Aidar' battalion. The commander refused to let the car pass because the husband of one of the women was on an SBU wanted list. He seized her passport and phone. The commander then sat in the car close to the woman and put his hand on her lap, saying the issue could be easily resolved. When the victim refused, the commander called over armed men in camouflage without insignia, who drove the women to the nearest police station. Unable to explain the grounds for their detention upon demand of the victims, police released the women several hours later.

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<sup>73</sup> HRMMU interview, 29 June 2016.

<sup>74</sup> HRMMU interview, 20 May 2016.

<sup>75</sup> The Temporary Order on the control of movement of people, transport vehicles and cargoes along the contact line in the Donetsk and Luhansk regions was developed and approved by 'the Operational Headquarters of Management of the Anti-Terrorist Operation', and entered into force on 21 January 2015. After consultations with civil society it was amended on 12 June 2015.

<sup>76</sup> HRMMU meeting, 10 June 2015.

<sup>77</sup> HRMMU interview, 16 September 2016.

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81. On 12 September 2016, a woman<sup>78</sup> who was travelling via one of the transport corridors in Donetsk region was told by an officer at the entry-exit checkpoint that there was a problem with her permit and was referred to a coordination centre at the checkpoint. An officer put her passport aside, asked her to enter the container with him, after which he closed the window and locked the door. He told her he had noticed her a month before and liked her, and had therefore intentionally made an error while renewing her permit. He then ordered that she should go with him to a hotel and that she would otherwise be kidnapped and buried alive. He then forced her to sit on his lap and touched, smelled and licked her whole body. She was crying and begging him to let her go. After one hour and a half, he agreed to release her on the condition that she would return to the checkpoint, threatening her with blackmail and physical violence. The victim agreed so that he would set her free. She immediately sought to report the case. OHCHR assisted the victim in filing a complaint to the police.<sup>79</sup> As of 15 January 2017, there had been no progress in the investigation into the incident.

### **3. Conflict-related sexual violence resulting from military presence in residential areas**

82. Other cases documented by HRMMU are linked to the military presence in densely populated civilian areas, such as towns near the contact line and administrative boundary lines, or towns to which military units are transferred.

83. For example, on 17 October 2015, a couple was attacked by two drunken soldiers from the 92<sup>nd</sup> brigade of Ukrainian Armed Forces in Kalanchak, Kherson region. As a result, the woman's arm was broken. On 5 December 2015, her property was attacked by intoxicated members of the 'Aidar' battalion (some of them armed), reportedly involved in the 'civil blockade' of Crimea.<sup>80</sup> On 18 December 2015 the same perpetrators attacked the woman on the street, chased her and beat her, saying "dirty sexual words". The police did not take any measures on the filed complaint and, according to the victim, they were afraid to protect her for fear of antagonizing the perpetrators.<sup>81</sup>

84. In November 2015, in the centre of Berdiansk, Zaporizhzhia region, three drunken men claiming to be military officers entered a café and attacked a man as he was video-recording. They insulted a pregnant woman - who was in the café with a female friend - after she asked them to stop. As the two women left, they were followed by two of the 'military' men. One of them kicked the pregnant woman in the stomach despite her pleas that she was pregnant. He then forced her to the ground, grabbed her by the hair and dragged her along the ground causing her severe pain; he also slapped her friend in the head several times. Reportedly, the perpetrators were members of the special patrol police battalion 'Storm'. No effective investigation into the incident was carried out, allegedly because of the unwillingness of the police to investigate and prosecute members of the battalion.<sup>82</sup>

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<sup>78</sup> HRMMU interview, 16 September 2016.

<sup>79</sup> HRMMU interview, 16 September 2016.

<sup>80</sup> Since 20 September 2015, hundreds of Ukrainian activists, including Crimean Tatars and members of nationalist battalions, have been blocking the flow of goods between mainland Ukraine and Crimea in both directions. It was carried out at all crossing points on the Ukrainian-controlled side of the administrative boundary line (ABL): in Chaplynka, Chongar and Kalanchak. For more information, see 12<sup>th</sup> OHCHR report on the human rights situation covering the period from 16 August to 15 November 2015, pp. 29-30.

<sup>81</sup> HRMMU interview, 22-28 February 2016.

<sup>82</sup> HRMMU interview, 14 September 2016.

## B. Cases of conflict-related sexual violence in the territory controlled by armed groups

*“I was immediately brought to the ‘death-row cell’. The terrorists’ chief came to me and said that they want my restaurant and shop. They invited a notary to the building. I was offered to sign papers to surrender all my real estate. At first I refused. But then he told me that he will bring my wife and our daughter here; Chechen fighters will rape them in front of me. Then of course I told that they can take everything they want – just don’t harm my girls”.*

- Man abducted by armed groups

*“Late at night, I was in the house with my son when two armed men in camouflage stormed into the house looking for my husband, who was not there. Then they forced me to... to get into sexual act with them, several times. My son was locked in another room. They left only in the morning”.*

- Survivor from Donetsk region

### 1. Conflict-related sexual violence in the context of deprivation of liberty

85. Despite limited access to places of deprivation of liberty in territory controlled by armed groups, precluding confidential individual interviews, cases documented by OHCHR as well as some service providers indicate that individuals, particularly women, detained by armed groups face a high risk of sexual violence.

86. An assessment of the cases reveals that armed groups usually detain individuals: due to their real or perceived affiliation to or support of Ukrainian forces or pro-Ukrainian stance; for so-called 30-day ‘administrative arrest’ for violation of the curfew or other ‘laws’ they impose or abduct them to extort money or property. OHCHR is also concerned that the armed groups also detain women who are witnesses of crimes that are investigated by ‘police’, which is reportedly done for their ‘protection’.

87. The people deprived of liberty by armed groups were mainly male and female adults between the ages of 20 and 50 years. Following their deprivation of liberty, victims reported often facing threats of violence, mock executions, torture and ill-treatment as interrogation techniques.

88. According to allegations recorded, men are subjected to more severe and prolonged torture than women. At the same time, women deprived of their liberty by armed groups have been more vulnerable to becoming victims of rape and gang rape often as a result of general lawlessness, the overall climate of impunity, the lack of a clear chain of command and clear orders and instructions prohibiting sexual violence, armed group members having unrestricted access to people deprived of liberty, and the absence of independent oversight or monitoring. Sexual violence occurred particularly often in the early stages of the conflict in 2014, when different armed groups each administered various places of deprivation of liberty. Some emblematic cases are presented below.

89. On 1 July 2014, a group of 10 armed men in camouflage who presented themselves as “samooborona” (“self-defence”) abducted a local entrepreneur from his parents’ home in Donetsk region.<sup>83</sup> At that time the town was under control of armed groups. According to his relatives, members of the armed groups had tried to extort money from the victim before his abduction. He was brought to the basement of the seized building being used as the headquarters

<sup>83</sup> HRMMU interview, 31 March 2016.

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of the “NKVD Komendatura” armed group. The perpetrators reportedly invited a notary into the building and forced the victim to rescind ownership to all his property to the leader of the armed group, call-sign “Vasilievich”. When the victim refused to do so, he was told that Chechen fighters would rape his wife and underage daughters in front of him. On the same day, the leader of armed-group and an unidentified man stormed into the apartment of the victim’s wife, and threatened her and their underage daughter with a knife and stole all their valuables. They told the women that her husband had been arrested and was sentenced to death for his “refusal to cooperate with the new authorities”. On 4 July 2014, the victim managed to escape as the Ukrainian forces were approaching the city. In July 2015, the victim died of cancer. This is one of the few cases where perpetrators have been brought to justice. The leader of the armed group (a former police officer) was later detained by Ukrainian law enforcement and has been found guilty of creating unlawful paramilitary or armed formations and participating in attacks on businesses, institutions, organizations or private individuals (article 260, part 4 of the Criminal Code of Ukraine) and sentenced to seven years of imprisonment (minimal punishment foreseen under this article). Sexual violence, however, was not reflected in the proceedings. Upon request of the victim’s wife, as of 16 January 2016 the case was with the Donetsk Regional Court of Appeals, which was relocated to Bakhmut from Donetsk city.

90. On 25 September 2014, in a village in Donetsk region, a woman and two of her colleagues (a man and a woman) were abducted at their workplace by armed men from the “Bezler group”, led by a local resident.<sup>84</sup> They were taken to the seized administrative building of a coal mine in Horlivka, where one of the women saw signs like “Horlivka NKVD” and “Smersh”, referring to the groups using the site. After being “registered” in a journal, the three individuals were informed they were “arrested”. They were taken to another room which was covered in blood. The man was violently beaten in front of the women until he fainted. Then both women were raped by at least seven men and beaten, while interrogated about the whereabouts of their money and valuables. One of the victims was subjected to electroshocks with wires attached to her breast, after which she lost consciousness. She woke up from an injection into her arm. Through the open door, she saw a room full of valuables, among which she recognized some of her belongings. She later found out that while she and her colleagues were being tortured, the armed groups had robbed their houses. For the following 10 days, she was taken for “interrogation” almost every night, and was raped by intoxicated armed group members. One day, the perpetrators brought an attorney and forced the victim to rescind ownership of her apartment and land property to the perpetrators. For the following months she was forced to cook meals for the armed group members and for other people deprived of liberty (both civilians and Ukrainian army soldiers). On 7 November 2014, she was released and moved the following morning to territory under the control of the Government.

91. In May 2015, a woman from Donetsk was apprehended by the ‘Vostok battalion’ for violating the curfew<sup>85</sup>. She was intimidated, forced into a car and brought to a place which, she thought, was a police department seized by the armed groups. She was beaten with metal sticks for three hours and raped by several men from the ‘Vostok battalion’ that night. She was released the next day.

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<sup>84</sup> The case was documented by one of the service providers after a lengthy psycho-therapy with the victim. The summary of the case was provided to OHCHR on 6 April 2016 upon consent of the victim. HRMMU interviewed the victim on 28 April 2016.

<sup>85</sup> HRMMU interview, 13 October 2015.

92. In a number of cases documented by OHCHR, victims reported surviving and evading attempted rapes, largely due to sudden extraneous circumstances. While this may have been the case, it also may be a sign that they were unwilling to provide detailed accounts of what had happened due to stigma, shame, humiliation, trauma and fear of possible reprisals.<sup>86</sup>

93. On 22 May 2014, in Donetsk city, the ‘traffic police’ of the ‘Donetsk people’s republic’ detained a woman and a man for rendering assistance to the Ukrainian Armed Forces. She remained deprived of liberty for five days. During her “interrogation”, she was tied to a chair in a painful position, blindfolded and beaten on the head and the legs, including with a blunt object she could not identify. She was subjected to a mock execution twice. During one of the nights, a group of men dressed in camouflage entered her cell and attempted to gang rape her. They ran out of the cell as another detainee was reportedly trying to hang himself in the neighbouring cell. She believed he did it to save her after hearing her screams and pleas. She was released on 27 May 2014 following OHCHR’s advocacy.<sup>87</sup>

94. On 22 July 2014, in Luhansk region, a woman who was delivering food and clothes to the Ukrainian forces with three other male volunteers was detained at a checkpoint manned by the ‘Cossacks’ Union’ of the ‘All-Great Don Army’. During the first two weeks of her detention, she and others were interrogated and tortured by Cossacks in an unidentified location. The woman was severely beaten with rifle butts and bullet proof vests until she lost consciousness. She was handcuffed throughout. As a result, four of her ribs were fractured, and her nose and most of her teeth were broken. She was forced to watch as two men were beaten to death. During further interrogation, perpetrators were reportedly extinguishing cigarette butts against her wrist, and threatening the life of her child and mother. She did not receive food or water for the first few days. After two weeks she was transferred to another building which had cells, with approximately 60 people held there at a time. While she was kept alone in a cell, the doors were always open. Often, at 2 a.m. the guards would organize a “roll-call” of the detainees and randomly beat whoever they wanted. At the end of summer 2014, during one such “roll-calls”, three guards entered her cell, attacked her and starting ripping her clothes off, attempting to rape her. She pleaded with them to stop and asked them to kill her, as she would otherwise commit suicide afterwards. From what she remembers, another guard told the attackers to stop. She was released in late October 2014.<sup>88</sup>

95. On 12 June 2015, three armed men in civilian clothes who presented themselves as agents of the ‘ministry of state security’ of the ‘Donetsk people’s republic’ detained a 22-year-old woman with a disability and her mother at their home. They were brought into the seized building of the Donetsk Administrative Appeal Court. The young woman was accused of being a “Ukrainian sniper” and was subjected to over six hours of questioning. Her mother was also questioned for a few hours but later released.<sup>89</sup> Although the victim was five-month pregnant, she was transferred to the premises of the “Isoliatsia” art exhibition space and museum - seized and used for military purposes by the armed groups - until she would be “re-educated and started loving the [‘Donetsk people’s republic’]”. She was kept there for almost a month, in a small (1m by 0.8m) room without windows, with a two-deck shelf

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<sup>86</sup> The Istanbul Protocol underscores that sexual torture often makes survivors feel irredeemably stigmatized and tainted in their moral, religious, social or psychological integrity.

<sup>87</sup> HRMMU interview, 5 May 2015.

<sup>88</sup> HRMMU interview, 10 August 2015.

<sup>89</sup> HRMMU interview, 13 June 2015.

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instead of a bed. The perpetrators switched the light on and off at will. She was disoriented and did not know the time of the day. She was given neither water nor food for a few days. One night the guards took her outside while it was raining, saying that they would kill her. They started kicking her, including on her stomach so that her “Ukrop [derogatory term used for Ukrainians] baby would not be born”. During that night she survived five such beatings. She also reported that her guards were trying to rape her; however she persuaded them not to, claiming she had a sexually transmittable disease.<sup>90</sup> On 25 July 2015, as a condition for her release, she was forced to give interviews to Russian and Donetsk media outlets and to claim she had been working for the “Tornado” patrol police company and the Right Sector but had joined the ‘Donetsk people’s republic’. On 8 August 2015, OHCHR facilitated her evacuation to Government-controlled territory. In October 2015, she gave birth to a healthy child.

96. In 2016 a woman was stopped on the road and detained. She was interrogated about her relative who was suspected of having pro-Ukrainian position. The captors threatened to send her to the front line, as the “guys there are hungry and have not seen women for a while”. She was released a week later.<sup>91</sup>

97. In 2016 a woman, ‘accused’ of ‘espionage’, was detained by armed groups in Luhansk region, she was deprived of liberty. During this time she was kept in Luhansk SIZO together with those who committed criminal offences. One evening in the beginning of August the guards brought her to the new officer on duty upon his demand. He told her that the “conditions in cells can be very different”, which she perceived as a threat of violence. Then he raped her. From then on, he called her to his office nearly once a week forcing her to perform oral sex. She did not complaint to anyone for the fear of retaliation. She was released several months later.<sup>92</sup>

98. OHCHR has also received a number of witness accounts about possible sexual violence perpetrated by armed groups while they were detained. Some Ukrainian soldiers who were held by armed groups for several months also provided accounts suggesting that armed group members would subject women in their custody to sexual violence. One man, who had been kept<sup>93</sup> for three weeks in March 2016 in the building of the ‘ministry of state security’ in Donetsk city, reported that some local women were detained for having violated the curfew or other ‘laws’. He referred to the frequent turnover of women, noting that “sometimes [they were] taken somewhere and never returned”. Although he never witnessed any incidents, he had serious concerns that those women could have been subjected to sexual violence. Another soldier, who was detained in Donetsk from February to April 2015, was kept in a cell with a man and a woman who had come to Donetsk to register their marriage. One day, drunken members of the armed group took the woman with them and brought her back several hours later. She was drunk, her hair and clothes were dishevelled and she was silent. The witness suspected that she had been raped.<sup>94</sup>

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<sup>90</sup> HRMMU interview, 25 August 2015.

<sup>91</sup> HRMMU interview, 20 January 2017.

<sup>92</sup> HRMMU interview, 26 January 2017.

<sup>93</sup> HRRMU interview, 5 April 2016.

<sup>94</sup> HRMMU interview, 1 March 2016.



## **2. Conflict-related sexual violence at checkpoints controlled by armed groups**

99. Since the start of the conflict in mid-April 2014, armed groups have arbitrarily established checkpoints, which have increased risks for civilians, including women.

100. On 23 June 2015, a five-month-pregnant woman was apprehended by armed groups of the ‘Luhansk people's republic’ at a checkpoint while trying to move to the territory controlled by the Government where she was planning to give birth.<sup>95</sup> She was hit by one of the armed elements and kept in an iron bunker at the checkpoint for four days without proper food, water or warm clothes. The armed group threatened to keep her there until she would give birth so that the baby would not be born in Government-controlled territory. She was released on 27 June 2015. After this incident, she had to be hospitalized as she faced complications with her pregnancy.

101. In November 2015, a woman who was travelling with her children from Donetsk city to Government-controlled territory was stopped at the checkpoint controlled by the ‘Donetsk people’s republic’. Members of the armed group demanded why she was taking her children to Government-controlled territory, stating: “we need children in the republic”. They extorted money from her and took all of her personal jewellery. They then took her away from the checkpoint and forced her to perform oral sex and subjected her to gang rape. Her children were kept apart from her during that time. After several hours of violence, she was allowed to pass the checkpoint.<sup>96</sup>

## **3. Conflict-related sexual violence resulting from armed groups’ presence in residential areas and other factors exacerbating risk of conflict-related sexual violence**

102. OHCHR was also concerned about reports of sexual violence perpetrated against civilians in residential areas cordoned off by armed groups due to their proximity to some military positions. Such incidents were mainly observed from the onset of the conflict until March 2015 in Donetsk city. For instance, women living in Kuibyshevskiyi district of Donetsk city reported to OHCHR that an armed group led by a man with the call-sign “Zhora” had blocked access from November 2014 to March 2015 to part of the neighbourhood, preventing civilians from accessing their homes.<sup>97</sup> Women alleged that the armed groups regularly kept local women “for entertainment” in a local kindergarten that they had seized.

103. The chief of ‘military police’ of the ‘Donetsk people’s republic’ informed OHCHR that in summer 2014, in Torez, a member of an armed group reportedly raped a local resident, while the same time he placed a grenade in her mouth. Reportedly members of the local armed group caught and detained the alleged perpetrator and the ‘general prosecutor’ of the ‘Donetsk people’s republic’ opened a ‘criminal case’. OHCHR is not informed of the results.<sup>98</sup>

104. OHCHR is also aware that some areas in Luhansk region were controlled by Cossack groups, who acted independently from other armed

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<sup>95</sup> HRMMU interview, 19 August 2015.

<sup>96</sup> The case was documented in December 2015 by the women’s NGO La Strada, to which the victim had applied for humanitarian and legal aid. The summary of the case was shared with HRMMU on 12 December 2016, with the consent of the victim.

<sup>97</sup> HRMMU interview, 26 March 2015.

<sup>98</sup> HRMMU interview, 15 October 2014.

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groups present in Luhansk regions, and were known for their discriminatory attitude towards women and committing human rights abuses.

105. On 9 September 2014, two Roma women (28 and 50 years old) and a six-year-old girl came to Shchotove village to check on their property. Reportedly, six armed Cossacks (allegedly belonging to “Rus” division) arrived at their house, acting on rumours spread by villagers that they were hiding gold in their garden<sup>99</sup>. They took the women and girl to Antratsyt town for interrogation at the local police department which, at the time, was run by Cossacks. Allegedly, the ‘police’ and the commander of the “Rus” division were informed by phone about their detention and told that the women were “disobeying the ‘authorities’”. On 10 September 2014, the victims were recorded as having been released from the ‘police station’ but they did not return home and their whereabouts remained unknown to their relatives. On 18 September 2014, the victims’ relatives posted a call on a social network with a request to provide any information about the disappeared. The bodies of all three victims were found in November 2014, in a forest near Orikhove, Luhansk region, in Cossack-controlled areas. In the summer of 2015, OHCHR obtained forensic data that they had died on 10 September 2014 as a result of gunshot wounds to their heads. The community believes that all three victims were raped; however it has been not possible to verify this yet.

106. OHCHR recorded allegations and attempted to conduct inquiries into the killing of a 20-year-old woman found on 16 April 2016 in Alchevsk, Luhansk region. According to local sources, she was raped and strangled. Allegedly, her body was found not far from a ‘Luhansk people’s republic’ position. Relatives refused to speak to OHCHR.

107. In territory controlled by armed groups, members of the LGBTI<sup>100</sup> community, especially women, considered themselves to be under threat of violence, including rape, based on their gender identity and sexual orientation.<sup>101</sup> Many have left these areas for the fear of persecution. On 19 December 2014, OHCHR succeeded in evacuating a transgender man from the areas controlled by armed groups. He feared persecution and was isolated at home without access to food or medicine. There were credible reasons to believe he was at risk of abduction and violence if he would attempt to leave the area alone as his identification documents did not reflect his gender identity. OHCHR negotiated with ‘officials’ of the ‘Donetsk people’s republic’ and the Ministry of Internal Affairs of Ukraine and the Ukrainian military to escort him to safety. The fear of persecution has reportedly intensified after the leaders of the ‘Donetsk people’s republic’,<sup>102, 103</sup> as well as the Russian

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<sup>99</sup> HRMMU interview, 8 April 2016.

<sup>100</sup> Lesbian, gay, bisexual, transgender, intersex.

<sup>101</sup> Members of the LGBTI community, especially women, reported fearing rape “for looking not like everyone else” or “for not responding to the advances of armed groups”. More information on the situation of LGBTI community in the territory controlled by armed groups and in the Autonomous Republic of Crimea can be found in the human rights report “Violation of LGBTI Rights in Crimea and Donbass: the homophobia in territory beyond Ukraine’s control” prepared by ADC Memorial with the support of the Centre for Civil Liberties, 2016. Available at: [http://adcmemorial.org/wp-content/uploads/lgbtENG\\_fullwww.pdf](http://adcmemorial.org/wp-content/uploads/lgbtENG_fullwww.pdf)

<sup>102</sup> The ‘head’ of the ‘Donetsk people’s republic’ stated: “...this generation is being raised on democracy, which implies that a family can have two fathers or two mothers. To me, this is categorically unacceptable.” Statement published on 25 January 2016 available at: <http://dnr-online.ru/my-dolzhen-donesti-svoim-detyam-tradicionnye-cennosti-glava-dnr-aleksandr-zaxarchenko/>

<sup>103</sup> One of the commanders of the armed groups of the ‘Donetsk people’s republic’ stated that “a culture of homosexuality is spreading... This is why we must kill anyone who is involved in this”. The interview published on 14 July 2015 available at: <https://www.ridus.ru/news/191031>

Federation authorities in Crimea<sup>104</sup>, have been reported as making threats, including calls to “kill those spreading the culture of homosexuality”. OHCHR considers such statements to be incitement to hatred and violence.

### C. Cases of conflict-related sexual violence in the Autonomous Republic of Crimea

*“When I was strangled – I was ready to confess to anything; although I could endure the pain. When I was electrocuted on genitals it was a different level of pain, I was ready to say whatever they wanted to hear”.*

- a detainee tortured by  
Federal Security

108. Due to the absence of physical access to the Autonomous Republic of Crimea, OHCHR has limited information about the treatment of people deprived of liberty at the hands of the Russian Federation authorities in Crimea. Lack of direct contact with the victims makes it less likely for them to disclose details that could enable OHCHR to draw conclusions about the use of sexual violence. OHCHR identified two cases of the Federal Security Service (FSB) of the Russian Federation subjecting men perceived to be pro-Ukrainian supporters to torture and ill-treatment, with elements of sexual violence.

109. On 9 May 2014 in Simferopol, a man, who had participated in pro-Ukrainian demonstrations since February 2014,<sup>105</sup> was abducted in the street by armed men in civilian clothes.<sup>106</sup> He was brought to an FSB office in Simferopol and accused of plotting terrorist attacks in Crimea. During the first five days of his detention, three FSB officers subjected him to various methods of torture and ill-treatment, including sleep and food deprivation, beatings, suffocation, threats of physical violence and death, until he signed a “confession”.

110. The perpetrators then demanded that the victim disclose information about two other ‘pro-unity supporters’ and subjected him to further and more severe torture. On the ninth day of his detention, electrical wires were attached to his genitals and an electrical charge caused him unbearable pain. To stop the torture, the victim signed documents he was provided. On the last day of his detention, FSB officers demanded that he sign a plea agreement. He was then subjected to forced nudity and pushed to the floor, where a few officers held him in place, while another circled a soldering iron over his body. The officers threatened to anally rape him with the soldering iron and tell other detainees about it. Based on a confession extracted from the victim through the torture, a Crimean judge ordered that he be placed in remand custody and, on 19 May 2014, he was transferred to an FSB facility in Moscow. Such transfer was in violation of article 76 of Geneva Convention IV<sup>107</sup>. On 24 December 2014, a

<sup>104</sup> A deputy of the Simferopol city council was reported as calling to “shield children from gays”, “to shut off the oxygen supply to people with a non-traditional orientation”, “to hit them right in the eye”. The interview published on 25 April 2016 available at: <http://www.c-inform.info/news/id/37995>

<sup>105</sup> Namely since 23 February 2014 when Russian Federation troops started blocking Ukrainian military units in Crimea.

<sup>106</sup> HRMMU interview, 22 July 2016.

<sup>107</sup> Article 76 of the Geneva Convention 76: “Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein”.

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Moscow City Court sentenced him to seven years of imprisonment. He was pardoned on 14 June 2016 and released.

111. Another man, arrested by the FSB in Crimea on 7 August 2016 for his alleged participation in a Ukrainian sabotage group,<sup>108</sup> as kept *incommunicado* and tortured by FSB officers to compel him to provide self-incriminating evidence. He was tied to a chair with duct tape and hooded with a bag, wires were attached to his body, and he was electrocuted. FSB officers threatened to rape him with a wooden stick if he would not confess.<sup>109</sup> While he was being interrogated, perpetrators tied a rope over his genitals causing him severe pain and suffering.<sup>110</sup> After being officially charged, in violation of article 76 of Geneva Convention IV, he was transferred to an FSB pre-trial detention centre in Moscow where he remained in detention at the time of writing this report.

## V. Responding to conflict-related sexual violence

*“What’s the point of saying what happened to me? No one will be able to help and no one will be able to find those who did it. No one will punish them”.*

- Survivor of sexual violence from territory controlled by armed groups

*“What? Castration? It is not used in Ukraine! I want to warn both of you that investigating your complaints will take significant time. It will prolong the trial for at least two or three months. You should know this!”*

- The reaction of a judge after a victim said that after his arrest “a man in black uniform and balaclava threatened to castrate me”

### A. Accountability for conflict-related sexual violence

112. OHCHR has noted prevailing impunity for cases of sexual violence, as well as for other human rights violations and abuses committed in the context of the conflict in Ukraine. This is partly due to the fact that the conflict is ongoing and that a significant part of the territory remains under the control of armed groups, with no oversight by any State authority. The impunity also reflects a systemic decades-old challenge to ensure accountability, as well as the failure to bring those responsible from one’s own ranks to account.

113. Accountability for conflict-related sexual violence is greatly limited by the scope of existing provisions in the national legislation of Ukraine (see paragraphs 52-58 of this report). In addition to this legal lacuna, OHCHR found that the established practice in the investigation and prosecution of sexual violence, environment of fear and intimidation, makes it difficult to bring perpetrators to justice and deters victims from seeking justice.

114. The Chief Military Prosecutor’s Office informed OHCHR that as at the end of December 2016, they had launched only three criminal proceedings that included allegations of sexual violence committed by Ukrainian forces and/or members of armed groups against civilians in Donetsk and Luhansk regions.<sup>111</sup>

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<sup>108</sup> See 15<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2016, paragraph 153.

<sup>109</sup> HRMMU interview, 7 September 2016.

<sup>110</sup> HRMMU interview, 11 December 2016.

<sup>111</sup> Letter from the Prosecutor General’s Office to OHCHR dated 23 December 2016.

115. Out of these three cases, two cases of rape (article 152 of the Criminal Code) were investigated by the National Police departments of Marinka and Velykonovosilky of Volnovakha district, Donetsk region, under the oversight and supervision of the Military Prosecutor's Office. As of 26 December 2016, however, the criminal proceedings were closed on the grounds that the alleged acts did not constitute a crime (article 284 of the Criminal Procedure Code).

116. The only ongoing criminal proceeding into the case of sexual violence was launched by the Investigative Department of the Chief Military Prosecutor's Office in 2015 into the conduct of the "Tornado" patrol police company.<sup>112</sup> Three members of the group were charged with violent unnatural gratification of sexual desire with the usage of physical violence (article 153 of the Criminal Code) committed against civilians. As of 31 January 2017, the case was being heard in Obolon District Court in Kyiv. Due to the sensitive nature of the case, the hearings are closed for public.

117. In cases of rape, investigators and prosecutors rely exclusively on certain types of forensic evidence. It particularly hinges on an immune-biological test that can demonstrate the fact of penetration and the results of a forensic examination of the body of the victim to prove the involuntary nature of the act, including a physical struggle between the victim and perpetrator. Both examinations, especially the immune-biological test, need to be conducted within 72 hours following the assault, provided that the biological material was not contaminated or destroyed. In most cases of conflict-related sexual violence, these two conditions cannot be met as the victims rarely have access to either law enforcement or medical facilities within 72 hours following the assault. Indeed, most of the victims were deprived of liberty for long periods after suffering sexual violence. Furthermore, since the start of the conflict, there has been a lack of accessible and functioning forensic laboratories in Donetsk and Luhansk regions.

118. According to investigators as well as lawyers working on such cases, without these two elements, a case of sexual violence almost never reaches trial.<sup>113</sup> Without such evidence, sexual violence charges are difficult to prove and often end up being dropped to lesser offences, such as intended grave (article 124) or minor (article 125 of the Criminal Code) bodily injury. Furthermore, according to Ukrainian legislation,<sup>114</sup> criminal proceeding into cases of rape and light bodily injury can be closed, if a victim withdraws their claim. Such provision, especially in conflict-related cases, creates a risk that a victim may be coerced to drop the charges.

119. While listed as possible sources of evidence in the Criminal Procedure Code (article 84), testimony and other evidence are generally not deemed by prosecutors and courts to have sufficient probative value. According to international practice, evidence other than forensic findings can be considered probative, such as testimony, physical evidence from the site of attacks, and documentary evidence.<sup>115</sup>

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<sup>112</sup> Twelve members of the 'Tornado' special police patrol company (also referred to as Tornado battalion) remain in custody pending trial accused of grave human rights violations including arbitrary detention, abduction and torture. According to the General Prosecutor's Office, the accused are responsible for the unlawful deprivation of liberty and torture of over 10 civilians. Two civilians (one man and one woman) were subjected to rape by the members of Tornado.

<sup>113</sup> HRMMU meetings on 1, 2 and 12 December 2016.

<sup>114</sup> Criminal Procedure Code of Ukraine (article 477).

<sup>115</sup> International Protocol on the Documentation and Investigation of Sexual Violence in Conflict (accessible at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/319054/PSVI\\_protocol\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319054/PSVI_protocol_web.pdf)).

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120. In addition to physical trauma, the mental pain and suffering inflicted on victims of rape and other forms of sexual violence is often long-lasting due, inter alia, to subsequent stigmatization and isolation.<sup>116</sup> However, psychiatric forensic examinations are not used to collect psychological evidence of torture, including sexual violence, as suggested by the Istanbul Protocol.<sup>117</sup> They are only used to establish the age and sanity of the alleged perpetrator, to determine the “helpless condition” of a victim, or to assess whether a victim or witness has the ability to testify in court.

121. There is also a lack of capacity among law enforcement officials to effectively investigate cases of sexual violence. Due to the ongoing reform and requalification, National police across Ukraine remains understaffed. As of 3 October 2016, police still lacked 18,875 police officers and 1,497 civil servants.<sup>118</sup> This has resulted in increased workload for serving investigators. Moreover, police officers and investigators lack the specific skills required to interview victims of sexual violence. Establishing a rapport with survivors, particularly those who were recently assaulted, requires specific psychological training and appropriate psychological support.<sup>119</sup> The manner in which police record victims’ testimony may be particularly traumatic and can prevent them from pursuing justice. In addition, across police stations in Ukraine, there are no specially equipped rooms for conducting confidential interviews. Finally, lawyers dealing with conflict-related human rights violations have told OHCHR that police are unwilling to open criminal proceedings into abuses committed by armed groups, when police have no access to the crime scene.<sup>120</sup> It is particularly important and urgent to address these various challenges as when victims decide to report a case of sexual violence, they most often address the police.<sup>121</sup>

122. Sexual violence is often not perpetrated in isolation but associated with other violations, such as unlawful killings, *incommunicado* detention and destruction of property or looting. Due to the lack of a clear legal framework, especially for sexual violence other than rape, acts of sexual violence are often recorded by law enforcement as other crimes, such as torture or bodily injury. Resulting charges do not reflect the severity of the conduct, or the character of the perpetrated crimes and their impact on victims.

123. Best international practices for documenting and investigating sexual violence are set out in the Istanbul Protocol<sup>122</sup> and the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict.<sup>123</sup> They provide detailed and practical guidance on collecting various types of evidence and were designed to promote accountability for these crimes; however neither is used by law enforcement bodies in Ukraine.

124. Access to justice and effective remedies for victims of sexual violence are also impeded by the ongoing judicial reform, which temporarily entails

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<sup>116</sup> Report of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016. Available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/31/57](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/31/57).

<sup>117</sup> Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. OHCHR, 2014.

<sup>118</sup> Statement by the Minister of Internal Affairs, 4 October 2016, available at: <https://www.facebook.com/photo.php?fbid=1149666698456768&set=a.101387876617994.2586.100002403454361&type=3&theater>.

<sup>119</sup> Istanbul Protocol.

<sup>120</sup> HRMMU meetings, 22 October 2015, 12 December 2016.

<sup>121</sup> Data confirmed by UNFPA mobile teams, which operate in five eastern regions of Ukraine since November 2015.

<sup>122</sup> Istanbul Protocol.

<sup>123</sup> International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, June 2014.

understaffing of courts and lack of judges' capacity to deal with such cases. Ukraine has 765 courts whose proper functioning requires the presence of 9,071 judges. As of 15 November 2016, 6,614 judges were employed. Six courts have no judges and cannot operate while almost 25 per cent of courts are understaffed by up to 50 per cent.<sup>124</sup> According to the recent legislative changes<sup>125</sup>, the President appoints the judges who are suggested by the High Council of Justice; the latter makes the proposal based on the recommendation of High Qualification Commission of Judges of Ukraine.

125. In cooperation with international organizations and donors, the National School of Judges in Ukraine offers several training courses with a gender component; there is however no specific training on sexual violence or violations and abuses in times of armed conflict.

126. Victims living in territory controlled by armed groups do not have access to justice. Survivors, particularly in the 'Luhansk people's republic', are afraid to report cases to 'police' or speak to OHCHR or other organizations for fear of retaliation. Service providers in Government-controlled territory, confirm that survivors from territory controlled by armed groups rarely disclose details of what happened to them, as they do not believe their perpetrators will ever be brought to justice.

127. OHCHR is aware of a few cases in which armed groups 'investigated' and addressed cases of sexual violence. These measures adopted cannot be seen as providing effective remedy<sup>126</sup> for the victims, as they were not taken by an independent and impartial body<sup>127</sup>. Furthermore, such 'processes' have placed blame on the victims. For example, on 25 October 2014, in Alchevsk (Luhansk region) the 'Phantom brigade' organized 'the first people's trial' to consider two cases of sexual violence. In the first case, a 37-year-old man - a member of an armed group - was accused of the rape of a 15-year old girl on 12 September 2014. In the second case, a man was accused of raping a 20-year-old woman, on 27 September 2014. The video of the 'trial' was posted online. The two alleged perpetrators were "sentenced to death"; following a vote by 340 residents, the first perpetrator was allowed to "go to the front-line to pay his guilt with blood". The fate of the two men was unknown at the time of writing this report. Despite the punishment, during this 'trial', the commander of the 'Phantom brigade' presiding over the 'proceedings', made derogatory comments regarding women, implying that they were responsible for what had happened to them. He stated: "from now on any woman seen in a café or a bar will be immediately detained and punished", adding that women should sit at home if they want to remain loyal to their husbands and be a good example to their children.

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<sup>124</sup> Information provided by the High Qualification Commission of Judges in a letter to HRMMU of 11 November 2016.

<sup>125</sup> Law of Ukraine number 1798-VIII On High Council of Justice, adopted on 21 December 2016, which entered into force on 5 January 2017.

<sup>126</sup> The right to remedy has three components under international law: (1) equal and effective access to justice; (2) adequate, effective and prompt reparation for harm suffered; (3) access to relevant information concerning violations and reparation mechanisms.

<sup>127</sup> Human Rights Committee, Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Adopted on 29 March 2004, para.15.

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## B. Services for survivors and victims

*“Night was the scariest time: that’s when people were tortured. A year later, I am still afraid of the night time. I can’t sleep and often get panic attacks; I jump up from any sound. To distract myself – I start baking. That’s the only thing that calms me down. I was offered a psychologist... but what do they expect? I cannot bear my soul to a stranger right away...”*

– A woman, survivor of torture and sexual violence by armed groups

*“I had to leave everything behind. I lost everything I had. With the help of a project, I finally regained my life - I managed to start my own business. Now I just want to forget everything and move on.”*

– A woman who was tortured and subjected to sexual violence by armed groups

128. Responding to conflict-related sexual violence requires a comprehensive, multisectoral approach involving the coordinated provision of health care, protection, shelter and rehabilitation services, psychosocial support and access to justice for survivors. At times, survivors and their families need economic and financial support. The availability and accessibility of such services will increase the likelihood that survivors will report sexual violence.<sup>128</sup> Victims and witnesses of human rights violations, particularly torture, most often request OHCHR to refer them to medical, psychological and legal services, or sources of economic support.

129. While Ukraine has a wide network of social care and medical institutions, the quality, accessibility and affordability of the services they provide is uneven and irregular throughout all territory of Ukraine. The referral pathways between various institutions do not always function and tend to depend on inter-personal relationships between professionals rather than inter-agency communication.

130. The Centres of Social Services for Family, Children and Youth are the main State providers of social services. As their main function is to provide assistance to families in difficult circumstances and to families with children, they almost exclusively deal with cases of domestic violence. They are often understaffed (on average at 80 per cent of required personnel) and have a high turn-over rate, which increases the workload of available social workers and makes it more difficult to provide adequate training. The situation has become more difficult with the dismissal of 12,000<sup>129</sup> social workers across Ukraine due to State budget cuts in 2014.

131. Medical professionals are generally aware of internal protocols to deal with survivors of sexual violence, and undertake testing and inform women about possible emergency contraception or procedures for interrupting unwanted pregnancies.<sup>130</sup> However, post exposure prophylaxis kits are not widely available in hospitals. Also, doctors frequently note that there is no psychological support in women’s clinics for patients and for doctors.<sup>131</sup>

132. Some doctors working in public clinics have noted that they did not have enough time to identify the causes of injuries. The State standards

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<sup>128</sup> International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, June 2014.

<sup>129</sup> These social workers were hired in 2012.

<sup>130</sup> Gender-based violence in the conflict-Affected Regions of Ukraine: analytical report. Kyiv, November 2015, Ukrainian Centre for Social Reforms, commissioned by UNFPA, p.7.

<sup>131</sup> Ibid, p.58.



governing gynaecological services allot 12 minutes (20 minutes for pregnant women) for examinations in public hospitals, during which a doctor is expected to record the medical history of the patient, conduct the examination, biopsy testing, and fill out a patient's chart.<sup>132</sup> OHCHR observed that specialized medical care is often unavailable in detention and places of deprivation of liberty.

133. Overall, professionals in State institutions lack the specific knowledge and skills required to deal with the victims of torture and sexual violence. Consequently, services for these groups are provided by civil society organizations through donor-funded programmes. In addition, high-quality services are mainly available in cities, mostly Kyiv, with little or no assistance available in smaller towns and rural areas. Accessibility of medical treatment is particularly critical for the life-saving post-exposure prophylaxis, which has to be taken within 72 hours.

134. Access to justice may be constrained by high fees for legal aid and council. OHCHR welcomes recent changes introduced by the Law on High Council of Justice enabling certain groups, including internally displaced persons, to access free legal aid.<sup>133</sup>

135. The humanitarian response to gender-based violence in Ukraine has been led by the Gender-based violence sub-cluster, which has focused on three key components: capacity building, service provision and awareness raising. In 2016, sub-cluster managed to provide psychological help, medical help and legal assistance to the conflict-affected population through the joint action of 22 partner organizations (international and local NGOs). These services were mainly designed as emergency response and focus on wide range of gender-based violence; however durable solutions are needed.

136. Mobile teams operated since November 2015 in five conflict-affected regions<sup>134</sup> by United Nations Population Fund (UNFPA) through the NGO Ukrainian Foundation for Public Health founded by HealthRight International, have identified 203 cases of sexual violence, including 43 cases of rape, which took place after 1 April 2014.<sup>135</sup> Approximately 43 per cent of victims of sexual violence were women in the age group between 25-36 years old. Out of these, 63 per cent of cases took place outside the family; however it is difficult to estimate how many of these are conflict-related. In approximately 36 per cent of cases women could not identify their perpetrator.

137. In 2016, the NGO *La Strada* received 38,547 calls from all regions of Ukraine through the National Toll-Free Hot Line on Prevention of Domestic Violence, Human Trafficking and Gender Discrimination; 68 per cent of calls were from women, 32 per cent from men. Calls about sexual violence (including intimate partner violence) comprised 2.5 per cent of all calls received.<sup>136</sup>

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<sup>132</sup> Ibid, p.58.

<sup>133</sup> Law of Ukraine number 1798-VIII On High Council of Justice, adopted on 21 December 2016, which entered into force on 5 January 2017.

<sup>134</sup> Government-controlled Donetsk and Luhansk regions, Zaporizhzhia, Dnipropetrovsk and Kharkiv regions.

<sup>135</sup> Overall, the mobile teams have identified 11,019 incidents of gender-based violence, some of which took place long before the conflict. Domestic violence comprised 69 per cent of these cases. OHCHR considered only cases occurring after 1 April 2014, as they could have some linked to the armed conflict.

<sup>136</sup> While the number of calls to La Strada hotline in 2016 increased by four times compared to 2015 (due to increased capacities of the hotline – now works 24/7), the percentage of calls pertaining to cases of sexual violence remained almost the same.

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138. Service providers mentioned to OHCHR that after the start of the conflict they registered some cases of domestic violence that may have causal link to the conflict: different political views in families triggering physical or psychological abuse, men prohibiting their wives to leave the territory controlled by armed groups, domestic violence in the families of demobilised soldiers. At the same time assessing the scale of these cases is difficult due to the absence of baseline data. The National Police also do not register the use of weapons in cases of domestic violence, or cases of domestic violence committed in families of armed forces personnel or IDPs.

139. There is an overwhelming need for long-term, comprehensive services. Most of the available services have fixed working hours and are not accessible 24/7. A lack of safe shelters for survivors remains one of the biggest challenges. Majority of big cities have a shelter funded from local budget; however they have only up to 30 places and rather strict admission criteria (for example registration in the region where the shelter is located). Only victims of domestic violence can have a long-term placement in these shelters. As of 15 January 2017, six regions in Ukraine did not have such shelters at all.

140. Service providers have highlighted that many survivors of conflict-related sexual violence would generally first approach NGOs for humanitarian aid, medical services and basic legal aid to restore their documents. Due to trauma, as well as the stigma attached to rape, many survivors only disclose their experiences after long periods of time and once they have received psycho-social support. Reportedly, survivors, especially soldiers, tend to conceal even the fact of their deprivation of liberty by armed groups from service providers. The details of ill-treatment and torture, especially sexual violence, are usually shared by the victim only when he or she requires medical or other specific assistance.<sup>137</sup>

141. Access to services for the survivors living in territory controlled by the armed groups is even further limited. While most medical and social institutions continued operating; there is a lack of medical professionals as many have left due to the conflict. The quality of services has deteriorated due to continued shortages of necessary medical equipment and specialized and affordable medication. The prices of medication are high and unaffordable for many. The situation is most dire in rural areas.<sup>138</sup> Medical facilities in territory under the control of armed groups thus still largely depend on humanitarian aid. The situation was further exacerbated by the armed groups' undue restrictions preventing civil society and humanitarian actors from carrying out their programmes, particularly those linked to protection and psycho-social support.

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<sup>137</sup> HRMMU meeting with Health Right International (grantee of the United Nations Voluntary Fund for the Victims of Torture in Ukraine) on 6 December 2016.

<sup>138</sup> For more information, see OHCHR reports on the human rights situation in Ukraine covering period from 16 February to 15 May 2016 and from 16 May to 15 August 2016.

## **VI. Conclusions and recommendations**

142. Based on the cases documented by OHCHR, there are no grounds to believe that sexual violence has been used for strategic or tactical ends in the armed conflict by Government forces or the armed groups in the eastern regions of Ukraine, or by the occupying power in the Autonomous Republic of Crimea.

143. OHCHR has not confirmed media reports of “cases of mass rape” in the conflict area. At the same time, OHCHR monitoring work indicates that cases of conflict-related sexual violence remain under-reported mainly due to the stigma and shame survivors feel, the lack of pertinent services on both sides of the contact line, and the weak capacity of law enforcement to investigate crimes of a sexual nature.

144. Regardless of the scale and scope of the phenomenon, sexual violence, particularly conflict-related, is a gross violation of physical integrity. In most cases documented by OHCHR, sexual violence was perpetrated against men and women and occurred in places of detention or deprivation of liberty. Beatings and electrocution in the genital area, threats of rape and rape were used in order to punish, humiliate, extract confessions, and/or compel the victims to relinquish property or perform other actions demanded by the perpetrators. These acts may amount to torture or to cruel, inhuman and degrading treatment.

145. While OHCHR noted certain steps taken by all parties to the conflict to improve command structures, prevent and address sexual violence, the prevailing impunity for human rights violations and abuses related to the conflict, unavailable or insufficient complaint and reporting mechanisms still exacerbate the risk of sexual violence.

146. The effects of the conflict on the rates of domestic violence and trafficking need to be further examined.

147. OHCHR noted an overwhelming lack of effective remedies for victims of conflict-related sexual violence. Access to services and justice is particularly limited to survivors living in the territory controlled by armed groups.

148. It is critical to ensure that all allegations of human rights violations and abuses, including sexual violence, are effectively investigated by law-enforcement and prosecuted in domestic courts.

149. Through collecting and recording victim and witness accounts of human rights violations and abuses, documenting incidents and identifying actors bearing responsibility, OHCHR seeks to contribute to realizing the right to truth and ensuring accountability. OHCHR will continue to pay particular attention to the issue of conflict-related sexual violence.

150. The recommendations formulated below include immediate and medium-term measures to prevent conflict-related sexual violence and respond to cases. Some recommendations made in the previous 17 OHCHR public reports on the human rights situation in Ukraine which are particularly relevant for preventing and addressing cases of conflict-related sexual violence are reiterated.

### **151. Recommendations to the Government of Ukraine**

a) The Government, Parliament and other relevant State bodies should amend the Criminal Code of Ukraine to align it with international standards and practice and to ensure accountability for sexual violence. In particular, the following changes should be introduced:

- in article 152 the following definition of rape could be suggested as all-encompassing and gender neutral: “penetration, however slight, of any part of

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the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent”. Such definition would also encompass acts that are currently included in article 153 “unnatural gratification of sexual desire”;

- in articles pertaining to sexual violence the following conditions should be included “committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or was committed against a person incapable of giving genuine consent”;

- at the very least, in articles 152 and 153 replace the notion of “helpless condition” to “vulnerable condition” as used in articles 149 and 303.

b) Supreme Court of Ukraine to review the Resolution<sup>139</sup> of the Plenum of the Supreme Court of Ukraine Nr. 5 from 30 May 2008 “On the Court Practice in Cases against Sexual Freedom and Sexual Inviolability of a Person” and amend it in the following way:

- to expand the notion of the “helpless condition”, so it is interpreted similarly to “vulnerable condition” as used in articles 149 and 303 of the Criminal Code of Ukraine. “Helpless condition” should also encompass the notion of coercive environment, such as an armed conflict, detention or other limitation of liberty. In principle, “helpless condition” should be interpreted in the following way: “committed by force, or by threat of force or coercion, such as that caused by fear of violence (when the victim believed the threat to be imminent and credible<sup>140</sup>), duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or was committed against a person incapable of giving genuine consent”;

- encourage courts to consider evidence other than the immune-biological test and forensic examination of the body of the victim as probative, such as testimonies of victims and witnesses, physical evidence from the site of the incident(s), documentary evidence, and results of forensic psychiatric examinations;

c) Law enforcement to issue internal instructions on how to investigate cases of conflict-related sexual violence, ill-treatment and torture based on international standards and practice (e.g. Istanbul Protocol and the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict) and investigate all such allegations with due regard to the rights of survivors;

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<sup>139</sup> <http://zakon2.rada.gov.ua/laws/show/v0005700-08>.

<sup>140</sup> The simple threat of the occurrence of violence is prohibited by Article 5 of the American Convention (torture), when it is sufficiently real and imminent, may constitute in itself a transgression of the norm dealt with. (Inter-American Court of Human Rights, *Tibi v. Ecuador*. 7 September 2004. Series C No. 114, par. 147; See also *Baldeón-García v. Peru.*; in the same sense, ECHR, *Soering v. United Kingdom*, 7 July 1989, Series A Vol. 161, par. 111; and CCPR, *Miguel Angel Estrella v. Uruguay* (74/1980), 29 March 1983, par. 8(3) and 10.) Moreover, the imminent and credible nature of a threat of torture or physical violence is what comprises severe mental suffering, which can be torture in and of itself (Inter-American Court of Human Rights, *Baldeón-García v. Peru*. 06 April 2006. Series C No. 147, par. 119; see also *Maritza Urrutia v. Guatemala*. 27 November 2003. Series C No. 103, par. 92.).

- d) Cabinet of Ministers<sup>141</sup> to ensure the development and provision of timely, non-discriminatory and comprehensive assistance to survivors of sexual violence and victims of torture. The following types of assistance should be made available: health services, including sexual and reproductive health, psychological, legal services and livelihood support and other multisectoral services, taking into account the specific needs of persons with disabilities;
- e) Law enforcement and judiciary should strengthen accountability and protection services to ensure survivors' rights to seek redress and reparation for sexual and gender-based violence, including that used as torture;
- f) Government to provide training on the Istanbul Protocol for medical personnel, forensic and legal professionals (judges, lawyers, prosecutors and police officers) and other officials, particularly those dealing with detainees and involved in the investigation and documentation of cases of torture, and to incorporate relevant training into the curricula of vocational, graduate and post-graduate educations of these professional groups;
- g) Law enforcement, judges and lawyers to refer the victim to psychiatric forensic examination to establish the impact of an investigated crime, including sexual violence, as suggested by Istanbul Protocol and already provided for in the Order of the Ministry of Health No.397<sup>142</sup>;
- h) Headquarters of the 'Anti-Terrorism Operation' to conduct a training for all State structures carrying out service at the entry-exit checkpoints on international human rights law principles particularly pertaining to freedom of movement, as well as prohibition of sexual violence; ensure unimpeded access of independent monitors at all entry-exit checkpoints and establish effective mechanisms for civilians to complain about violations they encountered and address these complaints;
- i) In the context of the Minsk Agreements, the Government to commit to no amnesty being given to those persons suspected of, accused of, or sentenced to war crimes, crimes against humanity or gross violations of human rights, including conflict-related sexual violence, recalling that amnesties are impermissible if they interfere with victims' right to an effective remedy, including reparation, or restrict victims' and societies' right to know the truth about violations of human rights and humanitarian law;
- j) Ensure that conflict-related sexual violence is comprehensively addressed in any future transitional justice processes, encompassing the full range of judicial and non-judicial measures, including prosecution initiatives, truth-seeking, reparations programmes, institutional reform or an appropriate combination thereof, as well as comprehensive national consultations, particularly with those affected by human rights violations and abuses;
- k) National Police to improve the collection of statistics on cases of domestic violence by registering the use of weapons in cases of domestic violence, separating cases of domestic violence committed in families of armed forces personnel or IDPs.
- l) Ensure full implementation of the National Human Rights Strategy and its Actions Plan and of the National Action Plan on "Women. Peace. Security", including by allocating required financial resources.

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<sup>141</sup> OHCHR understands that the key ministries involved would be the Ministry of Social Policy, Ministry of Health, Ministry of Justice, however some involvement of other ministries and State bodies may be required.

<sup>142</sup> <http://zakon5.rada.gov.ua/laws/show/z0219-02>, para 8.

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**152. Recommendations to all parties involved in the hostilities in Donetsk and Luhansk regions, including the armed groups of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’**

- a) Ensure unimpeded access to OHCHR and other international independent observers to all places of deprivation of liberty;
- b) Immediately release all persons arbitrarily deprived of their liberty;
- c) Take all possible precautionary measures to prevent sexual violence and immediately address any allegations of sexual violence, torture and other cruel, inhuman or degrading treatment committed by a member of an armed group, including actions of those with command responsibility by adopting all necessary and reasonable measures, such as:
  - Ensure that armed group members are properly trained in the rules of international humanitarian law, as well as adequately supervised;
  - Issue clear orders prohibiting sexual violence against civilians and/or detainees, as well as members of their own forces;
  - Minimise contact between armed group members and the civilian populations in Donetsk and Luhansk regions, particularly women and children;
  - Sanction armed group members found to have committed or condoned any crimes including sexual violence;
  - Share relevant information with authorities who have mandate to investigate human rights violations or abuses and violations of international humanitarian law including sexual violence, and support their efforts by facilitating the investigation, notably by ensuring that relevant information and evidence are preserved;
- d) Provide effective access for OHCHR to victims, witnesses and material evidence of grave human rights violations and abuses.

**153. Recommendations to the Russian Federation:**

- a) Allow unimpeded access to Crimea for all regional and international human rights bodies in order to enable them to monitor the human rights situation in accordance with their mandates;
- b) Cooperate fully and immediately with the Office of the United Nations High Commissioner for Human Rights and relevant organizations to enable them to carry out their mandate;
- c) Ensure that representatives of the law-enforcement agencies in Crimea are properly trained on the rules of international humanitarian law, as well as adequately supervised;
- d) Investigate all allegations of torture and ill treatment, including sexual violence, having due regard to the needs of victims and specific methodologies (e.g. the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict);
- e) Ensure that individuals found to be responsible for abuses are held accountable before an independent judiciary.

**154. Recommendations to international and donor community:**

- a) In the spirit of the Call to Action<sup>143</sup> (2013), support national institutions, local civil society networks and other relevant actors in increasing resources and strengthening capacities to collect data, manage cases and provide non-discriminatory comprehensive services to survivors of sexual violence and torture, particularly in smaller towns and rural areas, even if the statistical evidence data may be missing;
- b) Consider developing and supporting income-generating projects for the survivors of torture, ill-treatment and sexual violence;
- c) Continue supporting the services of the existing national toll-free hotline on prevention of domestic violence, human trafficking and gender discrimination, which is also able to receive calls from territory controlled by armed groups and Crimea;
- d) Assist State law enforcement agencies (National Police, Prosecutor General's Office and Security Service of Ukraine) in developing knowledge and capacity of staff to document and investigate cases of conflict-related sexual violence and torture in accordance with the Istanbul Protocol and International Protocol on the Documentation and Investigation of Sexual Violence in Conflict. Target with trainings that are adapted to the Ukrainian context and legislation, working-level professional staff (police, investigators, judges) apart from high-ranking officials and administrative staff;
- e) Support incorporation of elements related to proper documentation and investigation of torture in accordance with the Istanbul Protocol into the curricula of vocational, graduate and post-graduate education for medical and legal professionals;
- f) Support the Ministry of Defence, National Guard, State Security Services, Ministry of Internal Affairs and other relevant actors in increasing knowledge, understanding and use of international humanitarian law principles, including prohibition of torture and sexual violence, as well international human rights law;
- g) Provide assistance in the framework of the judicial reform to enable the judiciary increase their capacity to address cases of torture, ill-treatment and sexual violence;
- h) Support implementation of the National Human Rights Strategy and its Action Plan and of the National Action Plan on "Women. Peace. Security", including through strengthening coordination efforts and involvement of civil society.

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<sup>143</sup> In 2013, the United Kingdom's Department for International Development (DFID) launched what was originally called the *Call to Action on Protecting Girls and Women in Emergencies* (*Call to Action*) to mobilize donors, UN agencies, NGOs, and other stakeholders to protect women and girls in humanitarian emergencies. *The Call to Action* culminated in a high-level event, co-hosted by the UK and Sweden 13 November 2013. That event produced a ground-breaking communiqué, in which donors and humanitarian agencies committed to preventing violence against women and girls from the start of humanitarian emergencies. The Roadmap is available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/Call-to-Action-Roadmap.pdf>.